(1)

Supreme Court, U.S.
FILED

001802 APR 2 - 2002

OFFICE OF THE CLERK

No. _____

IN THE

Supreme Court of the United States

Laurie Barnaud

Petitioner

v.

Belle Fourche Irrigation District, Gary Brunner, Darrell Cox, Steve Gatzke, Harlan Palo, Robert Ruff, and Walter Stumpf, Individually and in their official capacity as the Board of Directors of the Belle Fourche Irrigation District

Respondent

On Petition For Writ of Certiorari
To The United States Court of Appeals For the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

Laurie Earley Barnaud
HC 76, Box 109
Nisland, SD 57762
(605) 257-2351

159 pp

QUESTIONS PRESENTED FOR REVIEW:

If the decision of the Federal District Court and Eighth Circuit Court of Appeals is allowed to stand, the Court will have created a place in the United States where assessment and taxation are arbitrary and capricious, and where assessment and taxation elude the 14th Amendment constitutional protections provided to all owners of property.

Can the Belle Fourche Irrigation District lawfully set special assessments against individual acres on any basis other than the benefits received?

Can a federal **repayment** contract dictate assessments against privately-owned, individual acres in the District for services provided by the District, **not by the federal government?**

Can a federal repayment contract between the United States and the District abridge the 14th Amendment rights of individual landowners by depriving landowners of the appeal hearing that precedes the final setting of an assessment and by depriving the delinquent landowner of the benefits while simultaneously assessing for the benefits of irrigation?

Is SDCL 46A-7-7 constitutional when interpreted as isolated from the body of South Dakota Codified Law, the United States Constitution's 14th Amendment, and the South Dakota Constitution Article 21 @ 7? 28 U. S. C., Sec. 2403b may apply.

PARTIES TO THE PROCEEDING

Laurie Barnaud,

Petitioner

v.

Belle Fourche Irrigation District, Gary Brunner, Darrell Cox, Steve Gatzke, Harlan Palo, Robert Ruff, and Walter Stumpf, Individually and in their official capacity as the Board of Directors of the Belle Fourche Irrigation District,

Respondents

TABLE OF CONTENTS

Questions Presented for Review..... ....Page i

Parties to the Proceeding.....Page ii

Table of Contents.....Page iii

Table of Cited Authorities.....Page iv

Citations.....Page 1

Basis of Jurisdiction..... .....Page 1

Statement of the Case, Material Facts and Argument.....Page 2

Appendix.....Page 26

TABLE OF CITED AUTHORITIES

CONSTITUTIONS **PAGE NO.**

United States Constitution – 14th Amendment
(On special assessments against property).....6, 12, 14, 22, 24
South Dakota Constitution Article 21, Sec 7.....3, 24, 25

CASE LAW

Adams v Shelbyville, 154 Ind 467, 54 NE 114.....16, 17
Brookings v Associated Developers, Inc. (SD) 280 NW2d..9
Bookings County v. Murphy(1909) 23 SD 311, 121NW 793 15
Chesebro v Los Angeles County Flood Control Dist, 306 US 459, 83 L Ed 92/1.....19
Davis v. Litchifield 145 Ill 313, 33 NE 888.....16
Haggart v. Alton (1912) 29 SD 509, 137 NW 372.....15
Joint Independent School District v Brooklyn Park (Minn) 256 NW 2d 512.....19, 20
Kansas C.S.R. Co. v Road Improv. Dist., 266 US 379, 69 L. Ed 335.....21
Moss v. Guttornson, 551 NW 2d 14, 17 (SD 1996).....23
St. Louis Land Co. v. Kansas City 241 US 419, 430 (1916).....14
State ex. rel. Oster v Jorgenson (1965) 81 SD 447, 136 NW 2d 870.....15, 16
Utah Idaho Sugar Co. v. Temmey (192) 68 SD 623, 5 NW 2d 486.....15

UNITED STATES CODE

18 U.S.C.1331.....1
28 U.S.C. 1291.....2
28 U.S.C 1254.....2
28 U.S.C. 1441.....1
28 U.S.C. 2403.....2
43 U.S.C. 383 (1994) Reclamation Act.....9, 18

PUBLIC LAW

Public Law 97-293.....22, 23

SOUTH DAKOTA CODIFIED LAW

SDCL 46A-7 in its entirety.....12, 24
SDCL 7-8-20(3).....5
SDCL 10-6-33.1.....5
SDCL 10-10-5.....5
SDCL 10-10-8.....5
SDCL 10-10-9.....5
SDCL 10-10-11.....5
SDCL 46A-5-18.....12
SDCL 46A-5-10.....14
SDCL 46A-6-8.....22, 23, 24
SDCL 46A-7-1.....5, 12
SDCL 46A-7-4.....19
SDCL 46A-7-7.....9, 10, 14, 17, 21
SDCL 46A-7-24.....5
SDCL 46A-7-33.....6

CONTRACTS

Contracts between the United States and the Belle Fourche Irrigation District

1949 Contract.....4, 13, 17, 18, 21
1971 Contract Amendment.....3, 4, 6, 7, 8, 11, 17, 18
1984 Contract & 1963 Amendment.....3, 7, 14, 20, 23
1996 Contract.....17, 24

OTHER SOURCES

American Jurisprudence

A 70 2d @ 26.....16, 21
A 70 2d @ 27.....19
A 70 2d @ 40.....15

CITATIONS

The District Court for the Western District of South Dakota in CIV No. 98-5028 decided for Summary Judgment in favor of Defendant District. However, the Court ruled against the District's argument concerning jurisdiction. District had argued that the matter of assessment was an agency determination and as such the Court lacked jurisdiction.

The Eighth Circuit Court of Appeals in Appeal No. 99-1895 and No. 99-1922 affirmed the District Court's decision for Summary Judgment in favor of Defendant District. The Court ruled against the Defendant District's appeal of the ruling that the Court has jurisdiction to review the assessments.

BASIS FOR JURISDICTION

This case began as CIV. No. 98-5028 in the United States District Court, District of South Dakota Western Division in Concerned Irrigators; Harold Nelson; Laurie Barnaud, Plaintiffs v. Belle Fourche Irrigation District; Gary Brunner, Darrell Cox; Steve Gatzke; Harlan Palo; Arthur Persche; Robert Ruff; Walter Stumpf, Individually and in Their Official Capacity as the Board of Directors of the Belle Fourche Irrigation District, Defendants pursuant to 28 U.S.C. @ 1441, citing the court's federal question jurisdiction 18 U.S.C. @ 1331. Summary judgment was requested by plaintiffs.

The Honorable Judge Battey of the United States District Court granted summary judgment to the defendants. Appeal was taken from the district court's final judgment and accompanying memorandum opinion and order of January 14, 1999, entered upon cross-motions for summary judgment filed by the District and Plaintiffs. The case was

appealed to the United States Court of Appeals for the Eighth Circuit as No. 99-1895 pursuant to 28 U.S.C. @ 1291 providing for appellate jurisdiction over final judgments of a district court. The Eighth Circuit Court of Appeals affirmed the District Court's grant of summary judgment to the District. Judgment was entered on January 2, 2001.

This appeal is filed pursuant to 28 U.S.C. Sec. 1254. Courts of appeals; certiorari; certified questions: Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree

In this particular case, a United States Court of appeals has entered a decision that interprets a South Dakota law as relieving a governing body from its constitutional requirement to assess special assessments against property in proportion to the benefit the property receives from the improvement or service.

Notifications required by Rule 29.4 (c) have been made. (28 U.S.C. 2403)

STATEMENT OF CASE, MATERIAL FACTS AND ARGUMENT

This case was brought before the Court by a group of farmers who sought judicial review of the assessment of their individual acres in the Belle Fourche Irrigation District. Prior to bringing the matter before the Court, the farmers had petitioned the Board of Directors for a change in the method of

assessment, but to no avail.[1] The Board initiated a change in ratios that determine assessment of individual acres in the District in 1971, by submitting a change to the electorate. The District manager testified that there is no "breakdown" of the 1971 assessment ratios, no verifiable basis such as a study, soil survey, or market analysis.[2] The District argued that they have followed the 1971 contract amendment since 1971, but the history of assessment proves otherwise.[3] In 1995 and 1996, when the Board had abandoned the 1971 contract ratios, the Board refused to allow water to be delivered to the land of Plaintiff Barnaud and to other land whose owners could not pay the assessments.[4] The Board told Plaintiff Barnaud that because of the 1984 contract's silence on the issue of assessment, they could assess "however they chose."[5] Bureau of Reclamation officials told the farmers that "state law" provides for assessment, and the Bureau has no control over assessment.[6]

Summary judgment was sought because the disagreement between the District and the farmers was simple: the farmers said the District had to follow South Dakota law, and thus assess according to the benefit received, and the District Board said they could assess however they felt was fair. [7]

During litigation, the arguments strayed from the original position of the Board, and the Board began to argue that they had followed the contract and the question became "Is the 1971 contract valid?" While this legal question needed to be answered, the

---

[1] Barnaud deposition, page 42

[2] Oliver deposition, page 48

[3] Exhibit #8 – Factual data compiled from deposition

[4] Barnaud deposition, page 63

[5] Barnaud deposition, page 40, 41

[6] Barnaud deposition, page 13, 14

[7] Oliver deposition, page 53-62

testimony before the Court is that the District did not follow any contract ratio or formula when setting assessments in the mid-1990s, and still today, follows no verifiable formula, study or apportionment in setting assessments against individual acres.[8] The testimony before the Court is that the contract ratios of the 1971 contract were established by a "vote", not by any Bureau studies, soil surveys, or market analyses that validates the benefits received from irrigation.

In the 1949 contract, when the District took over the operation and maintenance of the project, ratios were provided to the District in the Contract that established the assessment rate at between 40 and 50 cents from a Class Four acre for every dollar assessed against a Class One acre.[9] After the District's implementation of their 1971 vote, the proportional assessment began to narrow. By 1996, Class Four's assessment had climbed to 89% of a Class One acre.[10] And in 1998, at the time of deposition, with a $7.00 spread, the proportional assessment is 65%. [11]

The District, by the 1971 contract ratios[12] administers a mix of what appears to be assessment (charges set through the power of taxation) and tolls (equal-per-acre charges, with loss of service if failure to pay). In essence, with "equal per acre" operation and maintenance assessments, the Board is collecting tolls by assessment. But, the power of taxation and assessment has restrictions upon process that are ignored in the District. Plaintiff Barnaud testified that her water was "taken away" when she became delinquent, but assessments by the District against her land for irrigation continued even while she was

---

[8] Oliver deposition, page 48-53, 55-56

[9] Exhibit #4 – 1949 Contract ratios

[10] Exhibit #9 – Chart from Barnaud deposition

[11] Oliver deposition, page 53 and Barnaud deposition, page 22

[12] Exhibit #5 – 1971 Amendatory Contract ratios

denied water.[13] SDCL Chapter 46A-7-1 provides: "the board of directors thereof may either fix rates of tolls and charges and collect the same from all persons using such works for irrigation or other purposes, or may provide for the payment of such expenditures by assessments therefor, or by both such tolls and assessments." The collection of tolls is what is referred to by Bureau official, Kent Heidt in his deposition, when he agreed that as a general rule irrigation districts make an equal or uniform assessment for O & M costs among all landowners irrespective of land class.[14] Since, at least in South Dakota, the authority to assess property lies with the state of South Dakota, the federal government does not assess any land.

"Equal per acre" rates against individual acres is not a form of assessment allowed by South Dakota law. SDCL 46A-7-1 continues.... "if by assessment, such levy shall be made upon the completion and equalization of the assessment roll **in accordance with the benefit received**; and the board shall have the same powers and functions for the purposes of such levy as are now possessed by boards of county commissioners in this state and such assessment shall be collected as provided in this chapter." County Commissioners in South Dakota set their budgets and execute the tax levies, **after the Director of Equalization establishes the assessments** through a legally defined method, [15]and after the landowner is given an appeal hearing at which he may protest the assessment to be set against his/her property.[16] The assessments serve as the basis for the taxes levied. Commissioners do not deny citizens the right to use roads if the citizens fall behind on payment of an assessment." Collection of assessments in South Dakota is the same as collection of taxes,

---

[13] Barnaud deposition, page 28

[14] Heidt deposition, page 28

[15] SDCL 10-10-5, 7-8-20(3)

[16] SDCL 10-10-8, 10-10-9, 10-10-11

with filing of liens and ultimate confiscation of property when unpaid.[17]

Somehow, the Board of the Belle Fourche Irrigation District has managed to argue that a "federal contract" gives them the authority to not only set the budget and execute the levy, but that the "federal contract" also authorizes them to set assessments, and simultaneously withhold the benefits bestowed upon the land by the assessment. These actions on the part of the Board betray an unauthorized combination of powers....the powers of taxation **minus** the essential 14th Amendment provisions for special assessments. Is there authority for such exercise of power in South Dakota? In the United States?

South Dakota's constitution, codified law, and the United States constitution must serve this court in arriving at a judgment in this case. And in order for the Court to judge the legality of setting assessments within federal contracts, the Court must scrutinize all the powers being exercised through the same contract process. It is the mixing of the powers that creates a process that is outside the law. Through the mixing of authorities, and the omission of 14th Amendment restrictions on assessment and protections of the individual, the Belle Fourche Irrigation District board wields power unprecedented in the American system of taxation and assessment.

In this case before the Court, not only has the record of assessment and the Defendant District's testimony concerning the record been distorted, but the definition of assessment and the object of review have been blurred. This case is about the assessments set by the District Board against INDIVIDUAL acres, not about the assessment of the whole district for the payment to the federal government. The Bureau testified that the District was

---

[17] SDCL 46A-7-24, 46A-7-33

in compliance in the matter of the payments owed by the whole District to the Bureau.[18] The Bureau said that the contracts are only between the District as a whole, and are not between the United States and the individual landowners [19] Yet Federal District Court Judge Battey concluded that the 1971 contract provides the basis for the assessments because (1) the Board of Directors and Bureau followed the 1971 contract in setting assessments since 1971, and (2) the Bureau oversees assessment in the District. [20] Both of these conclusions are erroneous as evidenced by the depositions.

Plaintiff Barnaud and Manager Oliver testified that the Board of Directors did not follow the ratios of the 1971 contract in setting assessments in 1995 and 1996.[21] The increase in assessments for the $239,000 construction debt obligation was assessed "equal per acre," a violation of the 1971 contract. The difference in the assessment set against Class 4 low-producing land and the Class 1 high-producing land, was determined **by a survey** of what some farmers thought was fair.[22] Even the 1963 contract payment for the debt obligation for the Keyhole project was assessed "equal per acre," again, in violation of the 1971 contract ratios.[23]

Because the Federal District Court and the Appeals Court gave great weight to the "actions of the District," in coming to the conclusion that the 1971 contract was controlling in the matter of assessment, it is important that the actual history is clarified.[24]

---

[18] Heidt deposition, page 25

[19] Heidt deposition, page 24

[20] Battey's decision in Civ No. 98-5028

[21] Oliver deposition, page 50, 51& Barnaud deposition, page 70

[22] Oliver deposition, page 56

[23] Oliver deposition, page 46

[24] Exhibit #8

As for Bureau oversight, the Bureau official Kent Heidt testified that he did not know if the Bureau and the District had followed the 1971 contract, and he said he "did not know" what the assessments against individual acres were in the Belle Fourche Irrigation District.[25] O & M costs, he said, were to be established "at the discretion of the District."[26] Mr. Heidt said that the Bureau did not establish any ratios by which the district was to assess individual landowners, either for construction or operation and maintenance.[27] The Bureau could not logically be overseeing the assessment of individual acres if they did not know what the assessments were, and they did not provide any basis for the individual assessments. Mr. Heidt stated..."it's the district's responsibility to make their annual payment, ***not the individual irrigators.***"[28] Mr. Heidt said that the Bureau performs a study of the land classes and establishes their ability to pay, but he insisted that the study wasn't intended to establish any particular percentage ratio for the district to assess individual landowners. [29]

The question then becomes for the Court, what is the basis for the assessments established by the 1971 contract? If the Bureau established no basis, then who and what set the assessments in the Belle Fourche Irrigation District in the 1971 contract? The Court defeated the District's argument that the Bureau had granted the District "discretionary" authority in setting assessments.[30] The Court concluded that the contract itself establishes the assessment. But, without a standard provided by the contract, this too is unreasonable.

---

[25] Heidt deposition, page 23
[26] Heidt deposition, page 25
[27] Heidt deposition, page 25
[28] Heidt deposition, page 24
[29] Heidt deposition, page 28
[30] Eight Circuit Appeal No. 99-1922

"Validity of a special assessment depends upon the employment of a **valid method** of apportioning the assessment upon the various pieces of property assessed." (Brookings v Associated Developers, Inc. (SD) 280 NW2d 97).

The Appeals Court concluded that the District's argument that state law does not apply to the operation of a federal reclamation project was without merit. The Court stated: "Reclamation projects are therefore subject to state law, so long as that law is not inconsistent with federal law." Reclamation projects are subject to state law as is provided in the Reclamation Act 43 U.S.C. @ 383 (1994):

> "Nothing in this Act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder, and the Secretary of the Interior, in carrying out the provisions of this Act, shall proceed in conformity with such laws..."

However, the Federal Appeal Court affirmed Judge Battey's decision, and based its decision almost exclusively on one statute from South Dakota's codified law: SDCL 46A7-7 (1999)[31] The Court then said,

> "The District need not assess the landowners according to the benefit received if its contract with the Bureau requires a different method of

---

31Whenever any irrigation district, organized under the laws of this state, shall have contracted with the United States for a supply of water for the irrigation of lands within the district, the construction of irrigation or drainage works, or the operation thereof, or both, or other purposes authorized by law, the board of directors is authorized to make the assessments intended to meet the obligations of the district under such contract in accordance with the method and terms as provided by such contract, and no apportionment of benefits by the director of equalization shall be necessary when so provided in said contract.

assessment. South Dakota law authorizes an irrigation district to assess in accord with the terms of its contract with the United States S.D. Codified Laws 46-7-7 (1999).[4] The question we must answer, then, is whether the District's contract with the Bureau establishes a method of assessment."

Is this all the Court must establish? ***A*** method? Just any method? Is the Court not obligated to review the validity of the method?

The Court spelled out why the Concerned Irrigators arguments were incorrect, but the Court failed to recognize that the District, (1) didn't follow the 1971 federal contract ratios when they denied water to the landowners, and (2) does not have a **verifiable method** of assessment, even at present, with the current $7.00 spread between high and low producing lands.[32] **The testimony of the Defendant District Manager** is "That [the current $7.00 spread between Class One and Class Four acres] **was established I guess by the board on what they felt was an equitable spread** among the water users at that time." The Court can only assume this assessment is "equitable." The evidence and testimony before the Court reveals that assessments did not follow contract provisions and assessments bounced like a rubber ball in the past ten years. It is important to note that the $7.00 spread was not "established" until after the Concerned Irrigators organized and prepared to file suit against the Board of the Belle Fourche Irrigation District and the spread is not based upon the capacity of land to produce.[33]

Manager Oliver testified that in 1995 and 1996, the spread was $2.18 between Class One and Class

---

32 Oliver deposition, page 55

33 Oliver deposition, page 55, 51

Four acres, yet the construction debt obligation was nearly twice what it was in 1998 when the spread became $7.00 between Class One and Class Four. Debt obligation was $277,700 in 1996 and $145,000 in 1998.[34] This history of assessment reveals that assessments were arbitrarily and capriciously laid against individual acres. The testimony of the District's manager reveals even more capricious actions on the part of the District Board, as the District Manager said that they refunded $4.12 per acre for the debt obligation that was assessed for, but was never paid to the United States in 1995. If the District had been following the 1971 contract ratios in 1995 as is represented before this Court, when they took the water away from thousands of acres, the Class 4 acre would have been only assessed $1.20 per acre. [35] This means that when the Bureau and Board negotiated the reduction in the debt obligation, Class One acres, which should have been paying $12.00 per acre for debt obligation, on the new $240,000 rehabilitation payment, saw their assessments drop to $7.00 per acre, a $5.00 decrease in obligation (an obligation NEVER ASSESSED AGAINST CLASS ONE LAND, even during the two years, 1995 and 1996, when the full $277,200 was collected from land in the District) and Class Four saw their assessment drop from $1.20 per acre to about $.20 per acre, a $1.00 valid decrease. But, Class Four landowners were led to believe that they were getting a $4.12 reduction because their assessments had been set the same as Class One for the new payment obligation.[36]

Both Plaintiff and Defendant District testified to the same history, but the summation of the history of assessment became distorted through the Court proceedings, and the District allowed their counsel's assertion that the District "has been following the

---

[34] Oliver deposition, page 36, 37

[35] Exhibit #8

[36] Oliver deposition page 51 and Barnaud deposition, page 24

1971 contract ratios since 1971" to stand as a representation of fact.

The Manager testified to even more capricious assessment, when he stated that the District began to assess a "dollar per acre" in **preparation for the construction payment** that was going to become due in January of 1995.[37] If the assessments were "in preparation" for the construction payment, then the reasonable assumption is that the District would set assessments according to the 1971 contract ratios to prepare for the collection. Instead, the Board increased assessments at a rate of $1.00 per acre per year for three consecutive years, then $2.00 per year for two more consecutive years, without regard to land class.[38] Class Four's individual acre assessment increased by 70 percent in a short six years.[39]

The 1996 assessment was never revised, and for those who couldn't pay, and whose water was withheld, it became a confiscatory action....as they lost their benefits with no more process than a Board decision, a violation of their 14th Amendment right to due process.[40]

The entire chapter of SDCL 46A-7 is included in the Exhibits. The chapter authorizes and defines the powers and duties of the Board of Directors, and establishes a statutory method and procedure for funding the construction, operation and maintenance of the District. Beginning with 46A-7-1, the laws define the options for the Board in financing the District. The Board is authorized to collect funds by tolls, or by assessments, or by both. The methods are entirely different. The law is specific, however. If funds are collected by assessment, "such levy shall be made upon the collection and equalization of the

---

[37] Oliver deposition, page 50, 51

[38] Oliver deposition, page 50, 51

[39] Exhibit #9 – Chart from Barnaud's deposition

[40] Barnaud deposition, page 28

assessment roll in accordance with the benefit received..."

South Dakota's Constitution, Article 21, § 7 provides:

Irrigation of agricultural lands. The irrigation of agricultural lands is hereby declared to be a public purpose and the Legislature may provide for the organization of irrigation districts for the irrigation of land, and may vest the corporate authorities thereof and the corporate authorities of counties, townships, and municipalities with the power to construct, operate, and maintain irrigation dams, reservoirs, canals, flumes, ditches, and laterals, and to keep in repair all irrigation dams, reservoirs, canals, flumes, ditches, and laterals heretofore constructed, under the laws of the state, ***by special assessments upon the property benefited thereby, according to the benefits received.***

This is the only reference to irrigation districts in the South Dakota Constitution. Thus, this is the controlling reference.

SDCL 46-A-5-18 grants authority to the Board of Directors to contract with the United States for the delivery and distribution of water, construction, operation and maintenance under reclamation laws.[41] But, the Belle Fourche Irrigation District does not contract with the United States any more for the operation and maintenance of the project. The operation and maintenance was turned over to the District in 1949, with the 1949 contract.[42] This is a

---

[41] 46A-5-18 "....The board of directors may enter into any obligation or contract with the United States for the construction, operation, and maintenance of the necessary works for the delivery and distribution of water therefrom under the provisions of the federal reclamation acts and all acts amendatory thereof, or supplementary thereto, and the rules and regulations established thereunder; or the board may contract with the Untied States for a water supply under any act of Congress providing for or permitting such contract.

[42] Exhibit #4 – 1949 Contract

significant point, as the assessments that are set against Plaintiff Barnaud's land are primarily assessments paid directly to the District, **not assessments for repayment** to the United States. The contracts with the United States are REPAYMENT contracts. Manager Oliver testified that in 1997, the District only collected for operation and maintenance. There was NO debt collection. The assessment on Barnaud's land in 1997 was $12.98 per acre, while the assessment in 1998, was between $13.19 and $13.30 per acre[43]

The District is authorized to do construction, even without federal funds.[44] What standard, or measure, is to be used to set assessments for construction performed by the District when no funds are borrowed from the United States?

The Court has cited 46A7-7 as the controlling statute, but the Court has interpreted the statute as if it exists alone without the framework of the Constitution and the rest of South Dakota Codified Law....and outside the provisions of the 14th Amendment to the United States Constitution. Plaintiff Barnaud testified to the actions of the District, in refusing water to her land once she had become delinquent, while the Board simultaneously assessed against her land for irrigation benefits. Such a mixture of the collection of tolls (if you don't pay, you don't get to use the service) and the assessment against land is unprecedented and appears to be a double jeopardy. "When special assessments are made by a political subdivision, a taxing board or court, according to special benefits, the property owner is entitled to be heard as to the amount of his

---

[43] Barnaud deposition, page 21

[44] SDCL 46A-5-10

"The board of directors shall have the power to construct such works across any stream of water, water course, street, avenue, highway, railway, canal, ditch, or flume which the route of such canal or canals may intersect or cross...."

assessment."[45] (Case in reference: St. Louis Land Co. v. Kansas City 241 US 419,430 (1916)

South Dakota's 46A-7-7 does not relieve the District from its constitutional duty to assess according to the benefit received. "Special assessment is lawful and constitutional only when founded upon special benefits accruing from the improvement for which the tax on assessment is laid." (Haggart v. Alton (1912) 29 SD 509, 137 NW 372).

South Dakota's constitutional provision, Article III @ 1 provides that legislative power of the state shall be vested in the Legislature. "The Legislature cannot abdicate or delegate its authority and no legislative power can be conferred by act of Legislature upon any other department of government under constitutional provision." Brookings County v. Murphy (1909) 23 SD 311, 121 Nw 793.

"There is no constitutional objection to delegation to an administrative agency of quasi-legislative duties, **so long as the applicable statute** promulgates a legislative policy and **outlines the standard to be followed in its execution.** " Utah Idaho Sugar Co. v. Temmey (1942) 68 SD 623, 5 NW 2d 486.

"Although power to tax is essentially a legislative function, there are circumstances under which some aspects of taxing process may be delegated to an administrative officer board or tribunal, if in making such delegation, Legislature retains sufficient and proper control over those aspects which are not delegable, and if a sufficient guide or standard is laid down, for guidance of administrative officials....."[46]

---

[45] Caselaw.lp.findlaw.com/data/constitution/amendment 14

[46] 70 C American Jurisprudence @ 40

"The Delegation of Functions: Legislative authority to delegate functions of governmental nature to subordinate boards and commissions was visualized and recognized by this provision; Legislature, having written broad policy into law, can in the execution of that policy delegate quasi-legislative power or functions to executive or administrative officers or agencies, **provided it adopts understandable standards to guide its delegate in exercise of such powers**. State ex. rel. Oster v Jorgenson (1965) 81 SD 447, 136 NW 2d 870.

"The general rule is that statutes providing for **special or local assessments are to be strictly construed and strictly applied in favor of the owners of the property assessed, and against the assessing authority.** Statutes granting to municipal corporations the power to make special assessments must be strictly construed."[47] (Davis v Litchifield 145 Ill 313, 33 NE 888).

SDCL 46A-7-7 does not relieve the District from the Constitutional and statutory obligation to assess according to the proportion of the benefits received. SDCL 46A-7-7 is clear and unrefutable: "no apportionment of benefits by the director of equalization shall be necessary ***when so provided in said contract.***

The words only relieve the Director of Equalization from performing the apportionment, not the District, and only when the federal contract has provided through another method such apportionment, and **only if the contract specifically states that apportionment by the Director of Equalization is not necessary.**

"Since assessment proceedings may ultimately result in taking from the owner his property, a court,

---

[47] 70 C Am Jur

in construing a delegated power to make a special assessment for a public improvement, applies the rule that only such powers are conferred as are clearly comprehended within the words of the act, or are included therein by necessary implication; **any fair, reasonable doubt as to the existence of the power is resolved against it.** Any action beyond the terms of a statute granting the power to assess is ultra vires and renders the assessment invalid." (Adams v Shelbyville, 154 Ind 467, 57 NE 114).

It is not sufficient that the District has "a method" of assessment, as was stated by the Appeals Court. The District must have an equitable method, one that may be measured against a standard provided by law. The legislature cannot abdicate its power to a local board to set assessments according to gut feeling and according to surveys of some farmers.[48] SDCL 46A7-7 says that the district is authorized to assess in accord with the terms of its contract with the United States when the contract provides that no apportionment of benefits by the director of equalization is necessary. The 1949 contract is Exhibit #4 of the Plaintiff's original brief, and is provided in the Appendix to this petition as Exhibit #4. On page 6, paragraph 10b, the contract specifically provides in the final sentence, **"No apportionments of benefits by the District Assessor shall be necessary."**

This provision is absent the 1984 contract, the 1963 amendatory contract, and the 1971 amendatory contract. All of these contracts are part of the Court record. It is incorrect for the Court to conclude that the District need not assess the landowners according to the benefit received. The law says only that the Director of Equalization is relieved of the obligation to perform the apportionment of benefits when the contract specifically states such. What is reasonable

---

[48] Oliver deposition, page 56,65

to assume is that the United States government inserted the words, "No apportionments of benefits by the District Assessor shall be necessary," because the federal government had established the benefits received from irrigation through a verifiable, accountable, and documented **method of equitable ratios**. Since it is the United States Government that writes the contracts, and **provides the method** of assessment in the 1949 contract, it is reasonable that the United States Government established an assessment according to South Dakota's benefit received provisions, since **benefit received does not conflict with any federal law.** 43 U. S. C. 383 (1994) "Reclamation projects are therefore subject to state law so long as that law is not inconsistent with federal law."

The 1949 contract set ALL ASSESSMENTS, whether for construction, operation or maintenance on a set ratio that reflected the payment capacity of the land. The maximum ratio that a Class Four acre could be assessed was 50 cents for every dollar assessed against a Class One acre.

The 1971 Amendment, was initiated by the District Board, the governing body of the political subdivision, the Belle Fourche Irrigation District. The ratios were voted upon by the membership. **But in South Dakota, such a means of establishing a basis for assessment is not authorized by law.** The basis for assessment in South Dakota is "benefit received." It is unreasonable to say that the construction of the project benefits Class One acres ten to 100 times as much as it benefits a Class Four acre, but the operation and the maintenance of the project once constructed benefits every acre the same. The benefit that accrues may be measured by increased production, increased market value, or some other measure. In 1971, Class Four assessments were 50% of a Class One acre. By 1996, according to the chart provided in Barnaud's deposition, the Class Four

assessment had climbed to 89% of a Class One acre. Is it reasonable that the benefit that Class Four acres receive from irrigation increased from 50 to 89% of the benefit of the Class One acre in the past 30 years? Did the land itself change?

The history of the assessments which are before the Court testify to a different conclusion than has been reached by the lower courts.

"It is not necessary that a statute authorizing the assessment of land in an improvement district for the cost of the improvement contain any form of statement or finding in order to amount to a legislative determination of the enforcement of restraints imposed by the Federal Constitution upon the power of states to assess and collect taxes, the **substance of their enactments rather than the mere forms** of expression employed will be regarded as controlling." (Chesebro v Los angeles County Flood Control Dist, 306 US 459, 83 L Ed 92\1, 59 S Ct 622).

Thus, to say "a contract" is providing for assessment, is illegitimate unless that contract is complying with federal and state laws concerning special assessment of land, and using a verifiable, accountable standard. Also, to say, everyone benefits the same from the irrigation of lands that have unequal capacities to produce, and thus unequal capacities to benefit from water, is unreasonable. If there is any doubt about production increases, market is also a reliable determinant. But there must be much more to the method of assessment than gut-feeling, and landowners have a right to methods of assessment that are predictable and rational.

"Market value comparisons: Relative benefits may be calculated by using the market value of the affected property before and after the improvement, for this purpose, market value may be based on the

highest and best use of the land."[49] (Joint Independent School District v Brooklyn Park (Minn) 256 NW 2d 512.

It is reasonable that benefit received would be determined by either the amount of increase in production from irrigation, or the increase in the sale value of property because of the irrigation. South Dakota Law upholds these concepts.

The setting of "equal per acre" assessments upon very unequal land fails to meet any standard of benefit received, fair and equitable, or proportional. It is unjust and unaccountable to assess against a low producing acre the same as a high producing acre. If water brings a $50 increase in profits to one acre, and a $500 increase in profits to another acre, it is not equitable to charge each acre the same per acre. Equitable assessment requires that each acre be charged equally per $1.00 of profit that accrues from the delivery of irrigation water, or per $1000 value accrued because of irrigation. The equitable treatment and "benefit received" basis requires that the Board assess according to the benefit that each acre receives from the delivery of water, the benefit being defined in law as the value that accrues to the land.[50] Increase in the market value, increase in production....each provides a measure of the benefit of irrigation. The Board could set 3% or 5% or 7% of the assessed value, or whatever the Bureau studies showed to be a reasonable percent, as the levy against each acre. If the Board set a 3% assessment, the theoretical low producing acre described in this paragraph would pay $1.50 per acre, and the high producing acre would pay $15.00 per acre. "Equitable," "benefit received," proportional, and reasonable all demand that the assessment be based upon the value derived from the

---

[49] 70 C Am Jur 2d @ 27

[50] SDCL 46A-7-4

delivery of irrigation water, or in other words, the benefit received from irrigation.

"Determination of benefit of special or local assessment: Whether, and to what extent, property sought to be assessed has been benefited by an improvement is a question of fact, legislative or administrative rather than judicial in character, and the determination of such question by the legislature or by the body authorized to act in the premises is conclusive on the property owners and on the courts, **unless it is palpably arbitrary or grossly unequal and confiscatory**, in which case judicial relief may be had against its enforcement. Such legislative or administrative determination can be assailed under the Fourteenth Amendment to the United States Constitution where the legislative [51]action is arbitrary and by reason of its arbitrary character, a confiscation of particular property"[52] (Kansas C. S. R. Co. v Road Improv. Dist., 266 US 379, 69 L. Ed 335)

A testament to American law, is that had an appeal process been in place for the individual landowners in the Belle Fourche Irrigation District in 1995 as provided under the 14th Amendment to the United States Constitution for all special assessments against property, the property owners could have shown the Board of Equalization of the District that the assessments were not in compliance with contracts, nor based upon benefit received.

County assessors in the smallest county of South Dakota must follow an accountable and equitable method of assessment. And, every landowner, rich or poor, is given a hearing through which he/she may appeal the assessment set against his/her property. It is only after such a hearing is granted that the state may impose the assessment,

---

[51] SDCL 46A-7-7

[52] 70 C American Jurisprudence 2d @ 26

collect the tax, and execute sale of tax certificates and sale of property for unpaid taxes.[53]

South Dakota's law is clear. If funds for an irrigation district are collected by assessment, the assessments are special assessments upon the property benefited thereby, according to the benefit received." If the Federal District Court decision is allowed to stand, members of the Belle Fourche Irrigation District, and by precedent, members of all federal irrigation projects may be subject to arbitrary assessment.

Public Law 97-293, Section 205b and Section 208 states:

"Any contract with a district entered into by the Secretary specified in Section 203, shall provide for the delivery of irrigation water to lands not in excess of the landholdings described in subsection (1) upon terms and conditions related to pricing established by the Secretary pursuant to Federal reclamation law in effect immediately prior to the date of enactment of this Act, or in the case of an amended contract, upon the terms and conditions established by such contract prior to the date of its amendment. However, the portion of any price established under this subsection which relates to operation and maintenance charges shall be established pursuant to section 208 of this title.

Section 208 of the same title, part (c) states: "This section shall not apply to districts which operate and maintain project facilities and finance the operation and maintenance thereof from non-Federal funds."

Apparently, there is a difference when districts operate with their own funds versus when they repay the federal government for services provided.

---

[53] SDCL Chapter 10

There are two more disturbing aspects of the Appeals Court Decision. One concerns the interpretation of SDCL 46A-6-8, from U. S. Court of Appeals, No. 99-1922. South Dakota law requires that there be a vote of the people before the Board may increase the debt of the District. The contract is supposed to specify the method of assessment. The Appeals Court ruled that once a contract that increases the debt has been approved by the people, the Board may by simple resolution, change the payment scheme that was approved in the contract. If in the contract put before the people (which in 1984 included **the original 1949 contract** ratios), a particular payment arrangement is established, then how can the Board change the payment ratio through a simple resolution? If approval of a contract by a vote of the people is required prior to execution of the contract or beginning contract work, doesn't it end in an absurd result if the Board can change the assessment method that was approved in the contract by a simple resolution? (Moss v. Guttormson, 551 N. W. 2d 14, 17 (S.D. 1996) ("[I]n construing statutes together it is presumed that the legislature did not intend an absurd or unreasonable result.")

Does it matter that the people voted for the 1984 contract as a contract voiding all previous contracts, with the 1949 contract ratios being the only payment ratios dictated anywhere in the written document before them? Can the Court, sixteen years later, rule that the contract was not the right one, and the public must abide by the ratios that were not submitted to them, and were not approved by them in 1984?

The depositions of Oliver and Barnaud, reveal that the Board increased the indebtedness of the District when the Board signed the 1996 contract.[54] According to Barnaud's deposition, there was no vote

---

[54] Barnaud deposition, page 36 and Oliver deposition, page 10

allowed or provided for by the Board when they increased the debt. [55]

Thus, the governing body of the Belle Fourche Irrigation District, the Board of Directors did not follow the federal contract in setting assessments in 1995 and 1996, took away water from those who could not pay while continuing to assess, and authorized additional debt for the District without a vote of the people.[56] The Appeals Court invites even more arbitrary and capricious government in the Belle Fourche Irrigation District as the Court interprets that the Board may change assessment rates by mere resolution.[57]

If South Dakota's principle of benefit received is held binding upon all irrigation assessments, as is provided by statute and as is provided for all special assessments, then even when a contract provides the rate of assessment, the assessments must meet the constitutional and statutory requirements of benefit received, and all landowners must be granted their 14th Amendment rights. No arbitrary method of assessment should be sheltered within a contract, or any other document, and procedures for assessment must be subject to protest, just as all property tax assessments are now subject in the hearing and appeal processes provided by the state of South Dakota. SDCL Chapter 46A-7 requires that the irrigation assessments be "collected the same as real estate taxes," and the procedures are already established by law. It is only through the District and Appeals Court decisions, whereby SDCL 46A-7-7 is interpreted outside the framework of the South Dakota Constitution, outside the body of law contained in SDCL 46A-4 through 46A-7, and outside the restrictions and protections of the 14th Amendment

---

[55] Barnaud deposition, page 36

[56] SDCL 46-6-8

[57] Appeals Decision No. 99-1985, 99-1922, page 11

regarding special assessment that arbitrary and capricious assessment can prevail in the Belle Fourche Irrigation District.

If the lower Court's interpretation that SDCL 46A-7-7 stands, and SDCL 46A-7-7 allows a federal repayment contract to set special assessments against individual acres by a standard other than the constitutional "benefits received," then in light of the history of assessment against individual acres in the District since 1971, I submit to the Supreme Court that SDCL 46A-7-7 is unconstitutional.

When irrigation assessments are subject again to the most basic law of the United States and South Dakota, the federal and state Constitutions, then assessment in the Belle Fourche Irrigation District will become the restrained process it is mandated to be, characterized by reasonableness, justice and equity.

Dated this 30th day of May, 2001

Laurie Earley Barnaud

Laurie Earley Barnaud, Petitioner

APPENDIX

Exhibit 1: Decision from United States District Court, District of South Dakota Civ. 98-5029

Exhibit 2: Decision from United States Court of Appeals for the Eighth Circuit No. 99-1895 and No. 99-1922 : Filed January 2, 2001

Exhibit 3: Constitutional Provisions and Statutes verbatim

Exhibit 4: 1949 Contract between the United States and the District

Exhibit 5: 1971 Contract Amendment

Exhibit 6: 1984 Contract and 1963 Amendment

Exhibit 7: 1996 Contract

Exhibit 8: Record of Assessment in the Belle Fourche Irrigation District

Exhibit 9: Chart from exhibit of Barnaud's deposition

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 99-1895

Concerned Irrigators; Harold Nelson; Laurie Barnaud,
Plaintiffs - Appellants,
v.
Belle Fourche Irrigation District; Gary Brunner; Darrell Cox; Steve Gatzke; Harlan Palo; Arthur Persche; Robert Ruff; Walter Stumpf, Individually and in Their Official Capacity as the Board of Directors of the Belle Fourche Irrigation District,

Defendants - Appellees.

No. 99-1922

Appeals from the United States District Court for the District of South Dakota

---

Concerned Irrigators; Harold Nelson; Laurie Barnaud,
Plaintiffs - Appellees,
v.
Belle Fourche Irrigation District; Gary Brunner; Darrell Cox; Steve Gatzke; Harlan Palo; Arthur Persche; Robert Ruff; Walter Stumpf, Individually and in Their Official Capacity as the Board of Directors of the Belle Fourche Irrigation District,
Defendants - Appellants.

Submitted: February 14, 2000

Filed: January 2, 2001

Before BEAM and JOHN R. GIBSON, Circuit Judges, and PRATT,* District Judge.

JOHN R. GIBSON, Circuit Judge.

This case involves the Belle Fourche Irrigation District's method of assessing construction debt and operation and maintenance (O & M) costs to the landowners in the District. Concerned Irrigators, a landowners' association, and Harold Nelson and Laurie Barnaud, individual landowners, appeal the district court's[1] grant of summary judgment to the District. The appellants (collectively, Concerned Irrigators) argue that the District is violating both federal law, which requires construction charges to be equitably apportioned, and state law, which requires assessments to be made with regard to the benefit received. We affirm.

---

*The Honorable Robert W. Pratt, United States District Judge for the Southern District of Iowa, sitting by designation.

The United States Bureau of Reclamation constructed the Belle Fourche Irrigation Project in the early part of the twentieth century to deliver water to the arid lands of western South Dakota. After its completion, the project was operated by the Bureau.

---

[1]The Honorable Richard H. Battey, United States District Judge for the District of South Dakota.

In 1949, the Belle Fourche Irrigation District an organization formed by the landowners whose lands were irrigated by the project, took over the project's operation and maintenance.

The District annually assesses the landowners within the District to cover each landowner's share of construction debt and O & M costs. Over the years, the District and the Bureau have entered into several different contracts that require, among other things, repayment of construction costs. Four contracts are relevant to this dispute: the 1949 contract, the 1963 Keyhole contract, the 1971 contract, and the 1984 contract.

Under the 1949 contract, those who owned less productive land were assessed at a lower rate for both construction debt and O & M costs:

> All assessments, tolls, or other charges against individual tracts in the District for the purpose of paying the District's obligations shall be fixed for the different classes of land at such ratios as may be determined by the District's Board of directors: Provided, That all assessments shall be within the percentage ratios as follows, all ratios being based on a ratio of 100 for class 1 land:
>
> Class 1 - 100
> Class 2 - 88-92
> Class 3 - 60-65
> Class 4 - 40-50

Class 1 lands are the most productive; Class 4 lands are the least productive.

In 1963, the Bureau and the District entered into a contract that allowed the District to receive water from the newly constructed Keyhole Reservoir in Wyoming. The Keyhole contract amended the 1949 contract to provide for

payment of Keyhole construction debt and Keyhole O & M costs. The assessment method for these charges was the same as the method provided in the 1949 contract.

The District's board of directors proposed a different method of assessment in 1970. Under this proposal, the O & M costs were to be assessed equally based on the number of irrigable acres owned. Those who owned less productive land would no longer be assessed at a lower rate for O & M costs. In addition, the ratios for the land classes, which would still be used to assess construction debt, were to change. After the board passed the resolution, it submitted the proposal to the landowners for a vote. Of the 549 eligible voters, 363 voted, with 200 in favor of the change. The District and the Bureau then entered into a new contract in 1971, which modified both the 1949 contract and the 1963 Keyhole contract. The 1971 contract incorporated the new assessment method:

> The assessments to pay annual operation, maintenance, and replacement costs and assessments for any and all special or reserve funds shall be assessed equally against all irrigable acres irrespective of land classification. All assessments, tolls, or other charges against individual tracts of land in the District for the purpose of paying annual construction installments due under all contracts shall be fixed for the different classes of land at such ratios as may be determined by the District Board of Directors: Provided, That all assessments shall be within the percentage ratios as follows, with all ratios being based on a ratio of 100 for Class 1 lands:
>
> Class 1 - 100
> Class 2 - 65-80
> Class 3 - 10-25
> Class 4 - 1-10

In 1983, Congress enacted a law that designated the project as the Belle Fourche Unit of the Pick-Sloan Missouri Basin Program, allowing the project to benefit from the sale of hydroelectric power in the basin.[2] The purpose of the law was to modernize and improve the irrigation facilities in the District and to promote recreation and fish and wildlife preservation. The Bureau and the District entered into a new contract in 1984 to establish a new repayment plan for construction debt. By its terms, the contract superseded the 1949 contract and a 1976 contract that is not relevant here. The 1963 Keyhole contract was incorporated into the 1984 contract. The 1971 contract was not mentioned; however, the District continued to assess the landowners in accord with its provisions.

Today, the District assesses O & M costs equally per irrigable acre, as provided by the 1971 contract. The District assesses construction debt proportionally based on land class, but whether it is using the ratios from the 1971 contract is not clear.

Nelson and Barnaud filed suit individually and on behalf of Concerned Irrigators, an association of Class 3 and 4 landowners within the District. Concerned Irrigators alleged that the District's method of assessment is improper and in violation of its contractual and statutory obligations. The district court found that the 1971 contract was valid, that the 1984 contract did not supersede the 1971 contract, and that the District's assessment of O & M costs complies with its contractual obligations. The court also found that the District's assessment of construction debt complies with federal law. Concerned Irrigators appeals the court's grant of summary judgment for the District. The District

---

[2] Act of Nov. 17, 1983, Pub. L. No. 98-157, 97 Stat. 989 (authorizing rehabilitation of the Belle Fourche irrigation project).

cross-appeals, arguing that the district court lacked jurisdiction to review the assessment rates.

I.

Citing Flint v. United States, 906 F.2d 471 (9th Cir. 1990), the District argues that the authority to set assessments is a discretionary function of the Bureau of Citing Flint v. United States, 906 F.2d 471 (9th Cir. 1990), the District argues that the authority to set assessments is a discretionary function of the Bureau of Reclamation and that the district court therefore lacked jurisdiction to review the assessment method. In Flint, the Ninth Circuit held that the Administrative Procedure Act precluded review of the Secretary of the Interior's discretionary act of setting maximum O & M charges because there were no meaningful standards against which to judge the action. 906 F.2d at 475-76. Here, Concerned Irrigators is challenging decisions made by the District, not by the Secretary or the Bureau. Flint does not speak to the setting of assessments by a private irrigation district, and the district court did not lack jurisdiction to review the District's method of assessment.

II.

We review a grant of summary judgment de novo. Richmond v. Fowlkes, 228 F.3d 854, 857 (8th Cir. 2000). We view the evidence in the light most favorable to the nonmoving party, upholding summary judgment if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Id.; Fed. R. Civ. P. 56(c).

A.

Concerned Irrigators argues that the District's equal assessment of O & M costs and proportional assessment of construction debt does not comply with state law provisions requiring assessments to be made

according to the benefit received.[3] See S.D. Codified Laws §§ 46A-7-1 and 46A-7-5 (1999).

The District need not assess the landowners according to the benefit received if its contract with the Bureau requires a different method of assessment. South Dakota law authorizes an irrigation district to assess in accord with the terms of its contract with the United States. S.D. Codified Laws § 46A-7-7 (1999).[4]

---

[3] The District argues that state law does not apply to the operation of a federal reclamation project, citing Ivanhoe Irrigation District v. McCracken, 357 U.S. 275, 291(1958). This argument is without merit. The Reclamation Act provides:

> Nothing in this Act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder, and the Secretary of the Interior, in carrying out the provisions of this Act, shall proceed in conformity with such laws . . . .

43 U.S.C. § 383 (1994). Reclamation projects are therefore subject to state law, so long as that law is not inconsistent with federal law. See California v. United States, 438 U.S. 645, 670-79 (1978); South Delta Water Agency v. United States, 767 F.2d 531, 536-37 (9th Cir. 1985).

[4] 4In full, this section provides:

> Whenever any irrigation district, organized under the laws of this state, shall have contracted with the United States for a supply of water for the irrigation of lands within the district, the construction of irrigation or drainage works, or the operation thereof, or both, or other purposes authorized by law, the board of directors is authorized to make the assessments intended to meet the

The question we must answer, then, is whether the District's contract with the Bureau establishes a method of assessment.

B.

Under the 1971 contract, which modified the method of assessment found in the 1949 and 1963 contracts, the District assessed O & M costs equally for each irrigable acre and construction debt proportionally, using new ratios for the different land classes. Concerned Irrigators argues that the 1971 contract is invalid for three reasons: (1) it was not judicially confirmed as required by federal law, (2) it was not approved by a majority vote of the affected landowners as required by state law, and (3) it was superseded by the 1984 contract.

Federal law gives the United States authority to enter into repayment contracts with irrigation districts, but specifies that these contracts are not "binding on the United States until the proceedings on the part of the district for the authorization of the execution of the contract with the United States shall have been confirmed by decree of a court of competent jurisdiction, or pending appellate action if ground for appeal be laid." 43 U.S.C. § 511 (1994). Even if the United States is not bound by the 1971 contract because it was not judicially confirmed, the contract is not necessarily invalid. Cf. Restatement (Second) of Contracts § 7 & cmt. a (1979) (where a party has the power to avoid the legal relations created by a contract, that contract is voidable but not void). There is no evidence that the United States has ever attempted to escape any obligation created by the

---

obligations of the district under such contract in accordance with the method and terms as provided by such contract, and no apportionment of benefits by the director of equalization shall be necessary when so provided in said contract.

S.D. Codified Laws § 46A-7-7 (1999).

contract. The lack of judicial confirmation does not invalidate the 1971 contract.

Concerned Irrigators also argues that because a majority of all landowners in the District did not vote in favor of the 1971 contract, it is not valid. South Dakota law gives the board of directors of an irrigation district

> the power and authority to enter into any contract with the United States supplementing or amending any original contract with the United States, said original contract having been entered into pursuant to the provisions of chapters 46A-4 to 46A-7, inclusive; provided, that such supplementary or amendatory contract does not increase the amount of principal indebtedness of the district to the United States as it exists at the date of the supplementary or amendatory contract.

S.D. Codified Laws § 46A-6-8 (1999). South Dakota law also provides that no election or judicial confirmation is required for a supplementary or amendatory contract entered into under section 46A-6-8. S.D. Codified Laws § 46A-6-9 (1999). It is sufficient if the board of directors authorized the execution of the contract by resolution. Id.

The 1971 contract is supplementary to the 1949 and 1963 contracts, and it did not change the amount owed to the United States. Thus, it was within the power of the District's board of directors to authorize the contract by resolution, which it did. The landowner vote was legally unnecessary and does not change the analysis.

Finally, Concerned Irrigators argues that the 1984 contract, which does not mandate a particular assessment method, supersedes the 1971 contract.

To support this argument, Concerned Irrigators relies on the law that authorized rehabilitation of the Belle Fourche project, which states: "The Secretary of the Interior . . . is authorized to negotiate and execute an amendatory repayment contract with the Belle Fourche irrigation district . . . . This contract shall replace all existing contracts between the Belle Fourche irrigation district and the United States." Act of Nov. 17, 1983, Pub. L. No. 98-157, § 2(a), 97 Stat. 989.

The following provision from the 1984 contract is the complete discussion of prior contracts between the District and the Bureau:

> This contract shall replace in entirety the two existing contracts between the United States and the District covering repayment of costs of Belle Fourche Unit, Contracts Nos. IIr-1555 [the 1949 contract] and 14-06-600-1949A [the 1976 contract]. . . . Contract No. 14-06-600-6979 [the 1963 Keyhole contract] is attached as Exhibit B and by reference is made a part of this contract.

Exhibit B is the 1963 Keyhole contract in its original form. The 1984 contract does not mention the 1971 contract.

The 1971 contract modified both the 1949 contract, which is superseded by the 1984 contract, and the 1963 Keyhole contract, which is incorporated into the 1984 contract. Once the 1963 contract was modified by the 1971 contract, it ceased to exist in its original form. At that point, the District began assessing in accord with the 1971 contract. The District and the Bureau incorporated the 1963 contract into the 1984 contract, and there is no reason to infer that they intended to resurrect the earlier method of assessment. While they did attach the 1963 contract in its original form, the fact that the District continued to assess the landowners in accord with its

1971 contract obligations after entering into the 1984 contract serves to reinforce the most logical conclusion: That is, the 1963 contract currently exists in only one form, as modified by the 1971 contract.[5]

Concerned Irrigators argues that the Bureau and the District could not have intended for the 1971 contract to remain in effect because portions of it conflict with the 1984 contract and that it makes no sense that only the method of assessment would survive. We need not determine whether the entire 1971 contract is still in effect because the only provision at issue here is the method of assessment. This provision is still in effect as a modification of the 1963 contract, regardless of whether the remainder of the 1971 contract has survived.

Because the District's contract with the Bureau provides a method of assessment, the District need not comply with South Dakota's benefit-received requirement. Instead, the District is bound by the assessment method found in the 1963 Keyhole contract, as modified by the 1971 contract and as incorporated into the 1984 contract.

C.

---

[5]In its brief, Concerned Irrigators alleges that the District might not be assessing construction debt in accord with the ratios provided in the 1971 contract, which could imply that the 1971 modifications to the 1963 Keyhole contract were not incorporated into the 1984 contract. By conceding that the District may be using the 1971 ratios to assess construction debt, Concerned Irrigators fails to raise a genuine factual dispute on this point. In any event, there is no question that the District is assessing O & M costs equally in accord with the 1971 contract, and this fact is a sufficient basis on which to rest our conclusion that the 1963 contract no longer exists in its original form.

Finally, Concerned Irrigators argues that federal law requires the District to equitably apportion construction costs according to the land's productive value and that the District is not complying with this requirement. 43 U.S.C. § 462 (1994) provides:

> The irrigable lands of each new project and new division of a project approved, after December 5, 1924, shall be classified by the Secretary with respect to their power, under a proper agricultural program, to support a family and pay water charges, and the Secretary is authorized to fix different construction charges against different classes of land under the same project for the purpose of equitably apportioning the total construction cost so that all lands may as far as practicable bear the burden of such cost according to their productive value.

43 U.S.C. § 461 (1994) provides:

> The construction charges which shall be made per acre upon the entries and upon lands in private ownership which may be irrigated by the waters of any irrigation project shall be determined with a view of returning to the reclamation fund the estimated cost of construction of the project, and shall be apportioned equitably.

Section 462 authorizes the Secretary of the Interior to fix different construction charges for different classes of land without imposing any requirement that the Secretary do so. Because this section refers specifically to the Secretary, it does not apply to the assessment for construction debt made by the District. In any event, the District does assess construction debt differently for the different classes of land, and these classifications are based on the land's productivity. Section 461 simply requires construction charges to be apportioned equitably. The District's

proportional assessment of construction debt based on land class does not fall afoul of this standard.

Concerned Irrigators also argues that the law authorizing rehabilitation of the Belle Fourche project governs the District's method of assessment. During the rehabilitation,

> the rates of charge to land class in the unit shall continue to be as established in the November 29, 1949 repayment contract with the district, as subsequently amended and supplemented; thereafter, such rates of charge and assessable acreage shall be in accordance with the amortization capacity and classification of unit lands as then determined by the Secretary.

Act of Nov. 17, 1983, Pub. L. No. 98-157, § 2(c), 97 Stat. 989. Kent Heidt, a Bureau of Reclamation group leader, testified that this provision "allow[s the Bureau] to set a total payment amount for the district . . . ." Heidt also testified that the Bureau's 1995 analysis of the payment capacity of the land in the District, undertaken pursuant to Pub. L. No. 98-157, "would have been used as a basis for determining the total payment of the district." The manager of the District testified that the purpose of determining "the amortization capacity of the lands within the district was to set [the] overall repayment capacity of the district." The 1995 analysis and Pub. L. No. 98-157 do not prescribe a method of assessment. Instead, they are concerned with the District's total payment to the United States.

* * *

We affirm the district court's grant of summary judgment to the District.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

EXHIBIT 2

UNITED STATES DISTRICT COURT
DISTRICT COURT OF SOUTH DAKOTA
WESTERN DIVISION

CONCERNED IRRIGATORS HAROLD NELSON, and LAURIE BARNAUD,

CIV. 98-5028
1999 DSD 1

MEMORANDUM OPINION AND ORDER

Scott D. McGregor, Viken, Viken, Pechota, Leach & Dewell, Rapid City, SD
Attorney for Plaintiffs

Gordon Verne Goodsell, Martin Jacob Jackley Gunderson, Palmer, Goodsell & Nelson, LLP, Rapid City, SD
Attorneys for Defendants

Filed Jan 14, 1999

Richard H. Battey, Senior District Judge

I. PROCEDURAL HISTORY

[¶1] On February 13, 1998, Harold Nelson ("Nelson") and Laurie Barnaud ("Barnaud") individually and as representatives of Concerned Irrigators, filed a complaint in South Dakota state court against the Belle Fourche Irrigation District ("the District") and its associated board members. [1] The complaint alleges that the District is improperly assessing various costs to District landowners in violation of its contractual and statutory obligations. Concerned Irrigators is an

---

[1] Board members Gary Brunner, Darrell Cox, Steve Gatzke, Harlan Palo, Art Persche, Robert Ruff, and Walter Stumpf are named both individually and in their official capacity as the Board of Directors of the Belle Fourche Irrigation District.

association of landowners and irrigators from within the District. The District filed notice of removal with this Court on March 16, 1998 (Docket #1). Both sides have filed cross-motions for summary judgment (Docket #15 & Docket #19), raising issues for this Court that require the statutory interpretation of federal and state law, as well as the interpretation of contracts entered into pursuant to federal reclamation law. Accordingly, this Court has jurisdiction to proceed pursuant to 28 U.S.C. § 1331.

II. FACTS

[¶2] The following facts appear to be undisputed. The Belle Fourche Irrigation Project ("the Project") was constructed pursuant to the Reclamation Act of 1902 by the United States Bureau of Reclamation ("the Bureau").[2] Plaintiffs' Material Facts ("PSMF") at 1; Defendants' Material Facts ("DSMF") at 2. The purpose of the project was to promote farming through the delivery of water to the arid lands of western South Dakota (specifically lands in Butte and Meade County). PSMF at 2; DSMF at 2-3. Construction of the Belle Fourche irrigation works was completed before July 1, 1917. PSMF at 2; DSMF at 3. The Project was initially managed and operated by the Bureau. PSMF at 2.

[¶3] By 1949, the landowners serviced by the Project formed the Belle Fourche Irrigation District and thereafter took over the operation and maintenance of the Project from the Bureau. PSMF at 2; DSMF at 4. This transition was provided for by a contract between the Bureau and the District ("the 1949 Contract"). *See* Exhibit B, DSMF & Exhibit 4, Plaintiffs' Exhibits in

---

[2] *See* Reclamation Act of 1902, ch. 1093, §§ 1-10, 32 Stat. 388-90 (codified as amended at 43 U.S.C. §§ 372, 373, 383, 391, 392, 411, 416, 419, 421, 431, 432, 439, 461, 491, 498 (1988)).

Support of Summary Judgment ("Plaintiffs' Exhibits") (1949 Contract); *see also* PSMF at 2. In addition to requiring that the District assume responsibility for the operation and maintenance ("O & M") of the Project, the 1949 Contract also mandated that the District repay the United States for the Project's construction costs. PSMF at 2; DSMFat 3. Under the terms of the 1949 Contract, the District (through its elected board of directors) was to assess eachlandowner within the District for O & M costs and the construction debt. PSMF at 2-3; DSMF at 4-5. O & M costs are the costs necessarily expended to deliver water to each irrigable acre.[3] PSMF at 3; DSMF at 4. Construction debt is the debt assessed to the District, by the Bureau, for the District's portion of the Project's construction costs. PSMF at 3; DSMF at 3.

[¶4] Under the terms of the 1949 Contract, the land within the District was divided into four separate classes, based upon the land's production capability. Class 1 lands are the most productive, while Class 4 lands are the least productive.[4] Under this scheme, the 1949 Contract contained the following provision:

> All assessments, tolls, or other charges against individual tracts in the District for the purpose of paying

---

[3] 3. O & M costs include a host of miscellaneous expenses including labor costs for ditch riders, crews, and worker's compensation insurance; materials costs such as gravel for roads and herbicide for weed control; as well as the costs associated with the running of the District's office, such as staff, office products, and utilities. DMF at 4.

[4] 4. Federal law requires that construction repayment costs for the Project be apportioned "equitably" among the lands of the District based on their productive value. *See* 43 U.S.C. §§ 461-62.

> the District's obligations shall be fixed for the different classes of land at such ratios as may be determined by the District's Board of directors; Provided, that all assessments shall be within the percentage ratios as follows, all ratios being based on a ratio of 100 for class 1 land:
>
> Class 1 - 100
> Class 2 - 88-92
> Class 3 - 60-65
> Class 4 - 40-50

Hence, under the 1949 Contract, both O & M expenses and construction costs were to be assessed according to the land classification outlined above. Those owning poorer quality land were to be assessed less of the O & M and construction debt costs then neighbors owning land with a better production capacity. The funds assessed were then gathered by the District and paid to the Bureau.

[¶5] The District obtained additional water following construction of the Keyhole Reservoir in Wyoming. PSMF at 3; DSMF at 5. The conditions for delivery of the Keyhole water were outlined in a 1963 contract between the District and the Bureau ("the 1963 Contract") which accordingly amended the terms of the 1949 Contract to provide for the supplemental repayment of Keyhole construction costs as well as the new O & M expenses generated by the increased delivery of water. *See* Exhibit C, DSMF (1963 Contract). The terms under which the District was to assess O & M expenses and construction debt were not altered by the 1963 Contract.

[¶6] On May 5, 1970, the District's board of directors passed a resolution requesting that the Bureau amend the 1949 and 1963 Contracts in two significant ways. PSMF at 4-5. First, the District sought to amend Article 11 of the 1949 Contract and its identical provision under Article 8 of the 1963 Contract in order

to assess O & M costs equally, regardless of land class. Under this new scheme owners of Class 3 and Class 4 lands would no longer pay a lesser percentage of O & M expenses than Class 1 and Class 2 landowners. O & M costs were to be assessed based simply on the number of irrigable acres owned, not on the land classification. Second, the District sought to alter the ratios by which individual land classes were required to pay their portion of the construction debt. *Id.* In this respect, the District sought to supersede the previously-quoted provision pertaining to repayment ratios, implementing instead a repayment scale that favored owners of lower class lands. This new provision states:

> The assessments to pay annual operation, maintenance, and replacement costs and assessments for any and all special or reserve funds ***shall be assessed equally against all irrigable acres irrespective of land classification***. All assessments, tolls, or other charges against individual tracts of land in the District for the purposes of paying annual construction installments due under all contracts shall be fixed for the different classes of land at such ratios as may be determined by the District Board of Directors: *Provided*, That all assessments shall be within the percentage ratios as follows, with all ratios being based on a ratio of 100 for Class 1 lands:
>
> Class 1 100%
> Class 2 65%-80%
> Class 3 10%-25%
> Class 4 1%-10%

See Exhibit D, DSMF & Exhibit 5, Plaintiffs' Exhibits (1971 Amendment) (emphasis added). Once the resolution was passed by the Board, it was put to a vote of all qualified landowners within the District. PSMF at 5. Of the 549 voters eligible to cast a ballot, 363 persons voted, with 160 ballots being cast against the contract and 200 ballots cast for the contract. *Id.* Three ballots were declared spoiled. *Id.* Accordingly,

the 1971 Amendment was considered to have been approved.

[¶7] On March 16, 1971, following the tabulation of the election results, the District and the Bureau signed the 1971 Amendment. PSMF at 4; DSMF at 5. Thereafter the District assessed O & M costs equally among all classes of landowners, though it continued to assess (under the new ratios) construction repayment debt based upon the class of land owned by individual District members. The basic scheme outlined by the 1971 Amendment is still being used by the District today. PSMF at 7; DSMF at 7.

[¶8] On November 17, 1983, Congress enacted Public Law ("Pub. L.") No. 98-157. *See* Exhibit 7, Plaintiffs' Exhibits (Pub. L. No. 98-157). This law reauthorized the Project as the "Belle Fourche Unit" of the Pick-Sloan Missouri Basin Program. PSMF at 6. The purpose of Pub. L. No. 98-157 was to refurbish the irrigation facilities of the District with an aim toward recreation and fish and wildlife preservation. PSMF at 6; DSMF at 7. For this purpose, Congress appropriated the sum of $42 million. Pursuant to Pub. L. No. 98-157, the Bureau and the District entered into a new contract on October 10, 1984 ("the 1984 Contract") to effectuate the intent of Congress and establish a new repayment plan for the construction debt. *See* Exhibit E, DSMF & Exhibit 1, Plaintiffs' Exhibits (1984 Contract). The interpretation of this contract and its relationship to the prior contracts is, in large part, the matter presented to this Court through both cross-motions for summary judgment.[5]

---

[5] The Court is aware of at least three other amendatory contracts entered into between the Bureau and the District. None of these contracts, however, have any bearing on the questions currently before the Court. A 1976 Contract (No. 14-06-600-1949A) obligated the District to repay an additional $4,000 per year as a result of operation and maintenance cost savings resulting from modifications

III. SUMMARY JUDGMENT STANDARD

[¶9] Under Rule 56(c) of the Federal Rules of Civil Procedure, a movant is entitled to summary judgment if the movant can"show that there is no genuine issue as to any material fact and that [the movant] is entitled to judgment as a matter of law." In determining whether summary judgment should issue, the facts and inferences from those facts are viewed in the light most favorable to the nonmoving party, and the burden is placed on the moving party to establish both the absence of a genuine issue of material fact and that such party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 106 S. Ct. 1348, 1356-57, 89 L. Ed. 2d 538 (1986). Once the moving party has met this burden, the nonmoving party may not rest on the allegations in the pleadings, but by affidavit or other evidence must set forth specific facts showing that a genuine issue of material fact exists.

[¶10] In determining whether a genuine issue of material fact exists, the Court views the evidence presented based upon which party has the burden of proof under the underlying substantive law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505, 2513, 91 L. Ed. 2d 202 (1986). The Supreme Court has instructed that "summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed to 'secure the just, speedy, and inexpensive determination of every action.'" *Celotex Corp. v. Catrett*, 477 U.S. 317, 327, 106 S. Ct. 2548, 2555, 91 L. Ed. 2d 265 (1986). The

---

to the Belle Fourche Dam. The 1996 and 1998 Contracts (No. 5-07-60-WR170, Amendment 1 & 2) addressed the general construction repayment obligation due to additional funding for rehabilitation and project betterment and provided for a reduction in construction debt payments.

nonmoving party "must do more than show that there is some metaphysical doubt as to the material facts," and "[w]here the record as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'" *Matsushita*, 106 S. Ct. at 1356.

[¶11] The trilogy of *Celotex*, *Anderson*, and *Matsushita* provides the Court with a methodology in analyzing motions for summary judgment. *See generally* 1 Steven A. Childress & Martha S. Davis, *Federal Standards of Review* § 5.04 (2d ed. 1991) (discussing the standards for granting summary judgment that have emerged from *Matsushita*, *Celotex*, and *Anderson*).

IV. PRELIMINARY DISCUSSION

[¶12] Plaintiffs seek summary judgment requesting that this Court enter a judgment declaring: (1) that the 1971 Amendment between the District and the Bureau is void and unenforceable; (2) that the O & M expenses of the District cannot be assessed equally among all landowners of the District and must, instead, be assessed in accordance with the benefits received by the various land classes; and (3) that the District, its Board of Directors, and individual defendants have not assessed O & M expenses and the construction repayment obligation of the District in the method and manner required by state and federal law and the District's contract with the Bureau. In addition, plaintiffs urge the Court to enter an order: (1) directing the District to immediately reassess all lands in the District for their appropriate proportional share of the O & M expenses and construction repayment obligations of the District in the method and manner required by state and federal law and the District's contract with the Bureau; and (2) directing the District to refund to plaintiffs the amount by which they have been overcharged by defendants for O & M expenses and construction repayment costs.

[¶13] Before addressing the merits of plaintiffs' summary judgment motion, the Court addresses several of the District's preliminary arguments. The District urges, as a threshold matter: (1) that this Court lacks jurisdiction to review the Bureau's discretionary actions; (2) that plaintiffs Barnaud and Nelson lack standing as representatives of Concerned Irrigators to challenge the actions of the District; and (3) that plaintiffs have failed to properly exhaust their administrative remedies within the Bureau prior to filing suit. The Court has considered each of these arguments in turn and concludes that they are without merit.

[¶14] **A. Lack of Jurisdiction**

[¶15] The District's contention that this Court is being asked to adjudge a discretionary decision of the Bureau is without merit. The Court is not being asked to review a discretionary agency decision. Rather, the Court is being called upon to interpret federal reclamation and South Dakota laws, and the contracts that the District and the Bureau have entered into in regard to such laws. The Court does have jurisdiction under 28 U.S.C. § 1331.

[¶16] **B. Lack of Standing**

[¶17] It is the District's position that Concerned Irrigators is "an undefined group" and that therefore there exists an unidentified injury and a lack of redressibility.[6] The Court does not agree.

---

[6] Concerned Irrigators is an association of Class 3 and Class 4 landowners who seek to challenge the District's compliance with its statutory and contractual obligation. Barnaud and Nelson have filed suit both individually and as representatives of Concerned Irrigators.

[¶18] It is well settled that the test of standing focuses on whether the party seeking to bring a complaint before a federal court "is a proper party to request an adjudication of a particular issue." *Flast v. Cohen*, 392 U.S. 83,100, 88 S. Ct. 1942, 1952-53, 20 L. Ed. 2d 947 (1968). Thus, "[t]o be a proper litigant, the party must have 'alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issue.'" *Defenders of Wildlife v. Hodel*, 851 F.2d 1035, 1038 (8th Cir. 1988) (quoting *Duke Power Co. v. Carolina Envtl. Study Group, Inc.*, 438 U.S. 59, 72, 98 S. Ct. 2620, 2630, 57 L. Ed. 2d 595 (1978)). To ensure this requisite adverseness, the Supreme Court has specified three substantive requirements for standing. The party must show he personally has suffered some actual or threatened injury as a result of the defendant's conduct. *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 472, 102 S. Ct. 752, 758-59, 70 L. Ed. 2d 700 (1982). The injury must be "fairly" traceable "to the challenged action, and it must be likely to be addressed by a favorable decision." *Id.*

[¶19] Both Barnaud and Nelson are members of the District and own Class 4 land within its borders. As owners of Class 4 land they, as well as the members of Concerned Irrigators, are arguably being assessed more than their proper share of O & M costs and construction debt, thereby causing economic injury. Further, Barnaud and Nelson individually and as representatives of Concerned Irrigators allege that the defendant District, in making these assessments, is failing to comply with federal and state law, as well as its own contractual obligations to the Bureau. Under this analysis, a judgment by the Court declaring the District's assessments to be violative of federal and state law, accompanied with an order directing the District to reassess all lands in the District for their appropriate share of O & M cost and construction debt would clearly serve to redress plaintiffs' grievances.

[¶20] **C. Exhaustion of Administrative Remedies**

[¶21] The District contends that plaintiffs have failed to exhaust their administrative remedies before the Bureau. In support of its position, the District relies upon 43 C.F.R § 426.22 (1991) which provides the Bureau's regulations dealing with agency decisions and appeals.[7] These regulations, however, apply only to appeals that are made upon notice of a final determination made by the Bureau's regional director. Plaintiffs are not challenging a Bureau determination, nor is the Bureau a party to this action. Rather, plaintiffs are challenging the legality of the District's actions in regard to O & M and construction debt assessment. There is simply no Bureau remedy to be exhausted.

V. MERITS OF SUMMARY JUDGMENT MOTION

[¶22] A review of the exhibits and pleadings in this case reveals the three major issues for this Court's consideration.[8]

1. Whether the 1971 Amendment between the District and the Bureau is valid and enforceable?

2. If the 1971 Amendment is enforceable, were the relevant

---

[7]The Court would note that the section cited by the District has been superseded by 43 C.F.R. § 426.24 (1997). Despite a change in the wording, however, much of the effect of § 426.22 is preserved in the new provision.

[8] The Court recognizes that these issues may appear to be overly simplistic; however, each will serve as an umbrella under which all the relevant matters presented can be addressed with some semblance of clarity.

provisions pertaining to the assessment of O & M and construction costs amended or replaced by the 1984 Contract?

3. Are the O & M costs and construction debt payments being assessed by the District in a method and manner outlined in the District's contracts with the Bureau as well as in accordance with federal reclamation law?

[¶23] The material facts are not in dispute. The dispute involves questions of contract law and statutory construction. It is well settled that the interpretation of an unambiguous contract is a matter of law appropriately resolved on summary judgment. 27A *Federal Procedure*, § 62:746, at 513 (1996); *see also Calvello v. Yankton Sioux Tribe*, 884 N.W.2d 108, 111 (S.D. 1998); *State Farm Mut. Auto. Ins. v. Vostad*, 520 N.W.2d 273, 275 (S.D. 1994). Likewise, matters of statutory construction are also questions of law, properly resolved on summary judgment. *See Stover v. Critchfield*, 510 N.W.2d 681, 683 (S.D. 1994); *State v. Harris*, 494 N.W.2d 619, 622 (S.D. 1993).

[¶24] **A. The Validity of the 1971 Amendment**

[¶25] Plaintiffs urge that O & M costs cannot be assessed equally among landowners in the District as mandated in the 1971 Amendment, but instead must be assessed according to either the productive value of the land or according to the benefits received. Plaintiffs base this assertion on two statutes. First, federal reclamation law requires that the ***construction costs*** of irrigation projects be apportioned equitably according to the "productive capacity of the land" (thus under the Class 1 - 4 rating system). *See* 43 U.S.C § 461-62 (emphasis added). Second, South Dakota law, in a somewhat analogous provision, requires that where a contract between the Bureau and the District

is silent respecting the method and manner of making assessments, such assessments "shall be spread upon the lands in proportion to the benefit received." *See* SDCL 46A7-7; 46A-7-1[9]

¶26] While the Court agrees with plaintiffs' characterization of these two statutes, both are inapplicable in this case. The terms of 43 U.S.C. § 461-62 apply only to the costs assessed by the District for repayment of ***construction costs***. The statute

---

[9] SDCL 46A-7-7 states in pertinent part:

Whenever any irrigation district, organized under the laws of this state, shall have contracted with the United States for a supply of water for the irrigation of lands within that district, the construction of irrigation or drainage works, or the operation thereof . . . ***the board of directors is authorized to make the assessments intended to meet the obligations of the district under such contract in accordance with the method and terms as provided by such contract***, and no apportionment by the assessor shall be necessary when so provided in said contract. (emphasis added).

SDCL 46A-7-1 states in pertinent part:

For the purposes of defraying the expenses of the organization of the irrigation district, and for the . . . and for the purpose of defraying all expenses related to the care, operation, management, repair, and improvement of such portions of its canal and works. . . the board of directors thereof may either fix rates of tolls and charges and collect the same from all persons using such works for irrigation or other purposes, or may provide for the payment of such expenditures by assessments therefor, or by both such tolls and assessments; if by assessment, ***such levy shall be made upon the completion and equalization of the assessment roll in accordance with the benefit received*** . . . . (emphasis added).

offers no guidance as to the assessment of O & M costs. In fact, the Court's review of federal reclamation law fails to uncover any statute mandating that O & M costs be assessed based upon either the productive capacity of the land or the benefits received thereto. *See, e.g.*, 43 U.S.C. § 492 (O & M assessments to be made against each irrigable acre of land); 43 U.S.C. § 390hh(a) (requiring that O & M assessments "shall be at least sufficient to recover all operation and maintenance charges which the district is obligated to pay to the United States"); *see also Nampa & Meridian Irrig. Dist. v. Bond*, 268 U.S. 50, 45 S. Ct. 383, 384, 69 L. Ed. 843 (1925). Accordingly, the Court finds no statutory reason why O & M costs cannot be assessed equally among the landowners within the District.

[¶27] Plaintiffs also contend that the relevant contracts between the District and the Bureau are silent as to the manner of O & M assessment and urge that under SDCL 46A-7-7 and 46A-7-1, O & M costs must be assessed based upon the benefits received through the delivery of water.[10] Under South Dakota law, where a contract between an irrigation district and the Bureau is silent, SDCL 46A-7-1 acts to require that assessments be made in accordance the benefits received from the assessment. In order to make this assertion, plaintiffs argue that the 1971 Amendment, which expressly mandated that O & M costs ***be assessed equally against all irrigable acres***

---

[10]Plaintiffs are essentially arguing that the benefits received through their payment of O & M costs are synonymous with the requirement that construction costs be assessed based on the productive capacity of the land. Thus, they contend that under South Dakota law, O & M costs must be assessed based on the Class 1-4 rating system. Under this scheme, owners of Class 4 land, for example, would be assessed considerably less for O & M expenses than owners of Class 1 lands.

irrespective of land classification, is null and void. Plaintiffs contend that the 1971 Amendment is invalid because they believe that it was not passed by a "necessary majority vote of all the owners of the land affected," and further, that it was not judicially confirmed. *See* 46A-7-13; 43 U.S.C. § 511. The Court does not agree.

[¶28] The terms of the 1971 Amendment amended and superseded Article 8 of the 1963 Contract (along with Article 11 of the 1949 Contract). The purpose behind this amendment was two-fold. First, the District sought to assess O & M costs equally among all landholders, and secondly, the District altered the ratios by which the various land classes were to be assessed construction debt. The 1971 Amendment was properly passed by resolution of the District's board and it did not increase the principal indebtedness of the District to the Bureau. *See* Exhibit D, DSMF (board resolution & 1971 Amendment). Accordingly, South Dakota law does not require that such an amendatory contract be put to a vote or be judicially confirmed to be binding. *See* SDCL 46A-6-8; 46A-6-9.[11]

---

[11] 46A-6-8 states in pertinent part: The board of directors of any irrigation district established and organized under and by virtue of the laws of South Dakota, whenever deemed advisable and to the best interests of the district, shall have the power and authority to enter into any contract with the United States supplementing or amending the original contract ...*provided, that such supplementary or amendatory contract does not increase the amount of principal indebtedness of the district* **to the United States** as it exists at the date of the supplementary or amendatory contract (emphasis added).

SDCL 46A-6-9 states in pertinent part: In case any supplementary or amendatory contract shall be made with the United States under § 46A-6-8, ***no election shall be necessary, nor shall the board of***

[¶29] Nonetheless, assuming that the contract was subject to a vote of qualified District members, the Court cannot agree with plaintiffs' interpretation SDCL 46A-7-13.[12] Plaintiffs contend that in order to approve a contract (or in this case an amendment to a previous contract) the statute requires that a true majority of all eligible voters must vote for approval; a majority of those casting ballots is not enough.[13] Because the terms of the statute, when viewed alone, are ambiguous, the Court must engage in the process of statutory construction to determine the intent of the law, being careful to avoid an absurd result. See Moss v. Guttormson, 551 N.W.2d 14, 17 (S.D. 1996) ("[I]n construing statutes together it is presumed that the

---

directors of such irrigation district be required to proceed to a judicial confirmation of the making of such contract and the terms thereof. It shall be sufficient . . . for the board of directors of any irrigation district to authorize the execution of the same by its president and secretary by appropriate resolution adopted at any regular or special meeting of the board of directors (emphasis added).

[12] SDCL 46A-7-13 states in pertinent part: [T]he provisions of such a contract shall govern such district in making its assessments, provided such contract has been approved by the ***necessary majority vote of the owners of the land affected*** at an **election properly called for such purpose (emphasis added).**

[13] Under plaintiffs' interpretation, the 1971 Amendment could only have been approved by a majority of the 579 qualified voters eligible to cast ballots. Thus, 275 voters would have had to cast ballots for the measure (a true majority of all those eligible to vote). However, at the time of the election, only 363 votes were actually cast and the measure was approved by a majority of those casting ballots.

legislature did not intend an absurd or unreasonable result").

[¶30] With these rules in mind and upon a review of SDCL Chapters 46A-4 through 46A-7, the Court concludes that when SDCL 46A-7-13 is viewed in the context of other statutory enactments on the same subject matter, plaintiffs' construction of the statute would, indeed, lead to an absurd result. *Moss*, 551 N.W.2d at 17 (citing *U.S. West Communications Inc. v. Public Utilities Comm'n*, 505 N.W.2d 115, 122-23 (S.D. 1993)). Of the four chapters dealing with irrigation districts, at least eight statutes require a vote of District members for the approval of various measures. Of these statutes, every one requires only a ***majority of the votes cast*** for approval.[14]

[¶31] Finally, the Court notes that the 1971 Amendment, once approved by the voters, was duly executed by both the District and the Bureau, and despite subsequent contracts, the terms have been enforced for over two decades. *See Hisgen v. Hisgen*, 554 N.W.2d 494 (S.D. 1996) (contracting parties' acts in regard to contract should be given great weight). In view of this history, and the laws of statutory construction applied above, the Court concludes that the 1971 Amendment was enforceable at the time of its execution. A question does remain as to whether the 1971 Amendment was either replaced or superseded by the terms of the 1984 Contract.

[¶32] **B. The Effect of the 1984 Contract**

[¶33] Following the congressional passage of Pub. L. No. 98-157, the District and the Bureau entered into the 1984 Contract. Citing SDCL 46A-7-7 and 46A-7-

---

[14] *See* SDCL §§ 46A-4-61; 46A-4-71; 46A-4-85; 46A-5-4; 46A-6-4; 46A-6-7; 46A-6-24; 46A-7-3.

1,[15] plaintiffs argue that the terms of the 1984 Contract are silent as to the assessment of O & M expenses and construction repayment debt, and therefore the District must assess these costs according to the benefits received by the landowner. Article 3 of the 1984 Contract states:

> This contract shall replace in entirety the two existing contracts between the United States and the District covering repayment of costs of Belle Fourche Unit, Contract Nos. I1r-1555 [the 1949 Contract] and 14-06-600-1949A [the 1976 Contract Amendment]. Contract No. 14-06-600-6979 [the 1963 Contract] covering water entitlements and payments for Keyhole Unit shall remain in effect.

See Exhibit E, DSMF & Exhibit 1, Plaintiffs' Exhibits (1984 Contract). While the Court agrees that the 1984 Contract is in itself silent as to the manner of assessment,[16] contract has also expressly incorporated

---

[15] *See* footnote 9.

[16] Article 5(a) of the 1984 Contract states: The obligation of the District to pay annual construction charges to the United States as provided in this contract is a general obligation of the District as a whole, notwithstanding the manner in which the District may distribute the obligation among the District's landowners or water users and notwithstanding the default of individual landowners or water users in their obligations to the District.

Article 7(b) of the 1984 Contract states: The District, without expense to the United States, shall continue to care for, operate, and maintain the transferred works in full compliance with the provisions of this contract, and in such manner that the transferred works will remain in sound operating condition.

the 1963 Contract (and thereby its 1971 Amendment) which terms do clearly outline the manner in which such assessments are to be made.

[¶34] The Court recognizes that the 1984 Contract does not expressly adopt the terms of the 1971 Amendment; however it also does not expressly replace the 1971 Amendment, though it expressly replaces two other previous contracts. Plaintiffs urge, however, that the 1984 Contract ***does*** expressly replace the 1971 Amendment. This is simply incorrect. The two government contract numbers singled out for replacement by the 1984 Contract ***do not*** refer to the 1971 Amendment, but rather to the 1949 Contract and the 1976 Contract. *See* footnote 5. Further, upon the execution of the 1971 amendatory contract, the terms of the 1963 Contract were superseded and replaced. Thus, an adoption of the 1963 Contract became in fact an adoption of the contract as amended by the 1971 Amendment. This result is further bolstered by the actions of the District and the Bureau, who have continued to act in accordance with the terms of the 1971 Amendment up to the present date.

[¶35] As the foregoing discussion has shown, the 1963 Contract, as amended by the 1971 Amendment, expressly states that O & M costs are to be assessed equally among all landowners, regardless of class. Further, the contracts outline the ratio by which each class of landowner is to be assessed construction debt repayment. Accordingly, plaintiffs' argument that South Dakota law must be applied as a means by which to flesh out a necessary, but silent provision in the 1984 Contract is without merit. In light of this conclusion, the final issue to be considered asks whether or not the District is in compliance with the terms of these contracts in their manner and means of assessment of O & M costs and construction debt payments.

[¶36] **C. The District's Compliance with its Contractual Obligations**

[¶37] The 1963 Contract (as amended by the terms of the 1971 Amendment) mandates that O & M costs be assessed equally among all landowners in the District, regardless of land class. Neither party disputes that O & M costs are being assessed equally.

[¶38] Plaintiffs also urge that the District's assessment of the ***construction debt repayment*** is not in compliance with the terms of the relevant contracts. The Court disagrees. Federal reclamation law dictates that construction debt repayment be apportioned "equitably" and in proportion to the production capacity of the land. *See* 43 U.S.C. §§ 461-62. To assure this equitable apportionment, the District must make sure that the construction debt is assessed within the ratios outlined by the relevant contracts discussed above.[17] The Court notes that it is the Bureau's position (as the federal agency responsible for overseeing repayment of construction debt) that the District ***is in compliance*** with both federal law and its contractual obligations in regard to the assessment of construction debt. *See* Deposition of Kent Heidt ("Heidt Depo.") at 28-29 (Bureau of Reclamation representative).[18]

---

[17] Historically, the District maintained a $2.18 differential in construction debt repayment assessments between Class 1 and Class 4 lands based upon the ratios outlined in the 1971 Amendment to the 1963 Contract. *See* Deposition of Randy Oliver at 5 (Belle Fourche Irrigation District Manager). The differential between Class 1 and Class 4 landowners was increased to $7 in 1997 to reflect an increase in construction debt repayment obligation and landowner concerns. *Id.* at 51.

[18] As an employee of the Bureau, Kent Heidt is group leader for contracts and environment. His responsibilities include ensuring repayment of water

[¶39] To effectuate its assessment responsibilities, the District sends questionnaires to each class of landowner seeking information as to what the member considers to be a fair differential. Oliver Depo. at 54-55. Also considered are any relevant studies regarding land capacity that have been conducted by the Bureau, any survey results received from District landowners, the District's budgetary requirements, and the opinion of individual board members as to what they believe is a fair differential. *Id.* at 54-56. Given the efforts made by the District to effect an equitable assessment within the bounds of the land classifications established in the 1971 Amendment, the Court can see no reason to dispute the Bureau's position that the District is in full compliance with its contractual and statutory obligations. Accordingly, plaintiffs' assertion that the board is acting in an improper manner is without merit.

VI. CONCLUSION

[¶40] Because the 1971 Amendment was passed by proper resolution of the District's board of directors, and did not increase the principal indebtedness of the District to the Bureau, there was no need for it to be judicially confirmed or approved by the District voters as plaintiffs have urged. *See* SDCL 46A-6-8. However, even if the 1971 Amendment were required to be put to a vote, the Court is satisfied that the measure was validly passed by a necessary majority vote of the District members. Moreover, because the 1984 Contract expressly adopted the terms of the 1963 Contract (as modified by the 1971 Amendment), the Court concludes, contrary to plaintiffs' assertions, that

---

surface contracts in the Great Plains region, land management, power contracts, recreational management, and National Environment Act compliance. Heidt Depo. at 6.

the District is contractually obligated to assess O & M costs equally among all landowners, regardless of land classification. A review of the District's actions in assessing O & M costs and construction debt, in light of the Bureau's position, has convinced the Court that the District is in compliance with its contractual and statutory duty. Based on the foregoing discussion, it is hereby

[¶41] ORDERED that plaintiffs' motion for summary judgment (Docket #19) is denied.

[¶42] IT IS FURTHER ORDERED that the District's motion for summary judgment (Docket #15) is granted. Judgment shall be entered in favor of the District.

Dated this 14th day of January, 1999.

BY THE COURT:

"By s/ Richard H. Battey"
RICHARD H. BATTEY
UNITED STATES SENIOR DISTRICT JUDGE

EXHIBIT 3

CONSTITUTIONAL PROVISIONS AND STATUTES

United States Constitution: Fourteenth Amendment, Sec. 1: All persons born or naturalized in the United States and submect to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immuntiies of citizens of the Untied States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

United States Code

43 U.S.C. 383 (1994) Reclamation Act: "Nothing in this Act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder, and the Secretary of the Interior, in carrying out the provisions of this Act, shall proceed in conformity with such laws..."

Public Law 97-293, Sec 205b, Sec 208 state:

Section 205b: "Any contract with a district entered into by the Secretary specified in Section 203, shall provide for the delivery of irrigation water to lands not in excess of the landholdings described in subsection (1) upon terms and conditions related to pricing established by the Secretary pursuant to Federal reclamation law in effect immediately prior to the date of enactment of this Act, or in the case of an amended contract, upon the terms and conditions established by such contract prior to the date of its amendment. However, the portion of any price established under this subsection which relates to operation and maintenance charges shall be established pursuant to

section 208 of this title.

Section 208: "This section shall not apply to districts which operate and maintain project facilities and finance the operation and maintenance thereof from non-Federal funds."

South Dakota's Constitution Article 21, § 7 provides: Irrigation of agricultural lands. The irrigation of agricultural lands is hereby declared to be a public purpose and the Legislature may provide for the organization of irrigation districts for the irrigation of land, and may vest the corporate authorities thereof and the corporate authorities of counties, townships, and municipalities with the power to construct, operate, and maintain irrigation dams, reservoirs, canals, flumes, ditches, and laterals, and to keep in repair all irrigation dams, reservoirs, canals, flumes, ditches, and laterals heretofore constructed, under the laws of the state, ***by special assessments upon the property benefited thereby, according to the benefits received.***

SOUTH DAKOTA CODIFIED LAWS

7-8-20. General powers of county commissioners. In addition to others specified by law, the board of county commissioners shall have power:

(3) To levy a tax not exceeding the amount authorized by law, and to liquidate indebtedness;

10-6-33.1. Factors considered in determining value of agricultural land. The true and full value in money of agricultural land, as defined by § 10-6-31, which has been in primarily agricultural use for at least five successive years immediately preceding the tax year for which assessment is to be made shall be the market value as determined for each county through the use of all comparable sales of agricultural land

based on consideration of the following factors:

(1) The capacity of the land to produce agricultural products as defined in § 10-6-33.2; and (2) The location, size, soil, terrain, and topographical condition of the property including but not limited to capability, the land's use, climate, accessibility, and surface obstructions which can be documented through an analysis of land selling prices.

The comparable sales that are used shall be evidenced by an instrument recorded with the register of deeds of the county in which the land is located, if the date of such instrument and the recording date is not more than two years prior to the assessment

10-10-5. Classification of real estate -- Factors considered -- Inspection and hearings. The person employed pursuant to § 10-10-2 shall make a classification of all lands and other real estate as a basis for fixing values for taxation purposes. In making such classification, he shall personally inspect such real estate and place each legal subdivision in its proper class, making the proper distinction between each legal subdivision as to topography, soil, location, and other factors that may reasonably enter into valuation. He shall enter such classification in a permanent record which shall be open to examination and inspection by any interested taxpayer. In working out a classification of all lands for taxation purposes, he shall hold hearings in convenient places within the county for the purpose of obtaining information from local property owners to aid him in working out an equitable classification for taxation purposes.

10-10-8. Consideration and equalization of classification and valuations at annual equalization meeting -- Changes by Office of Hearing Examiners. The county commissioners at the regular annual equalization meeting, shall consider the classification made pursuant to § 10-10-5, together with the value placed upon each tract of land and the value of the

improvements thereon, and may, for good cause shown, change such classification and value thereon as may be just, and shall make such equalization thereof between the various townships as is now provided by law therefor. The valuations placed upon such lands shall become the basis for taxation purposes subject only to any change that may be made under the law by the Office of Hearing Examiners in equalizing property valuations between the different classes of property in the various counties of the state. However, the Office of Hearing Examiners may not in any way raise the total valuation of such property within the state.

10-10-9. Changes in classification and valuation -- Notice to taxpayers. Whenever the board of county commissioners, acting as board of equalization, shall determine to change the classification and value of any real estate valued by it pursuant to classification as herein provided, fifteen days' notice shall be given of such contemplated action to the taxpayers affected by the county auditor within which to show cause why such change in classification and value should not be made.

10-10-11. Appeal from county board in classification, valuation and equalization matters. Any person, firm, limited liability company, corporation, public or private, taxing district, or state department interested, may appeal from any action of the board of county commissioners or the county board of equalization in making classification, valuation, or equalization under § § 10-10-1 to 10-10-9, inclusive, either to the circuit court or to the Office of Hearing Examiners. Appeals to the circuit court shall be taken in the manner prescribed in chapter 10-11 for taking appeals from decisions of the county board of equalization. Appeals to the Office of Hearing Examiners shall be taken and conducted pursuant to chapter 1-26. A decision of the Office of Hearing Examiners shall be final without

further agency action.

46A-5-10 The board of directors shall have the power to construct such works across any stream of water, watercourse, street, avenue, highway, railway,.....

46A-5-18 The board of directors may enter into any obligation or contract with the United States for the construction, operation, and maintenance of the necessary works for the delivery and distribution of water therefrom under the provisions of the federal reclamation acts and all acts amendatory thereof, or supplementary thereto, and the rules and regulations established thereunder; or the board may contract with the United States for a water supply under any act of Congress providing for or permitting such contract.

46A-6-8 The board of directors of any irrigation district established and organized under and by virtue of the laws of South Dakota, whenever deemed advisable and to the best interests of the district, shall have the power and authority to enter into any contract with the United States supplementing or amending any original contract with the United States, said original contract having been entered into pursuant to the provisions of chapters 46A-4 to 46A-7, inclusive; provided, that such supplementary or amendatory contract does not increase the amount of principal indebtedness of the district to the United States as it exists at the date of the supplementary or amendatory contract.

SOUTH DAKOTA CODIFIED LAW - CHAPTER 46A-7

46A-7-1. Tolls, charges and assessments -- Expenses covered -- Levy of assessments. For the purpose of defraying the expenses of the organization of an

irrigation district, and for the purpose of defraying all expenses incurred in formulating a general plan for the proposed operation of an irrigation district including surveys, maps, estimates, examinations and plans made in order to demonstrate the practicability of such general plan, all as authorized by § § 46A-5-2 and 46A-5-3, and for the purpose of defraying all expenses related to the care, operation, management, repair, and improvement of such portions of its canal and works as are completed and in use, including salaries of officers and employees, the board of directors thereof may **either fix rates of tolls and charges** and collect the same from all persons using such works for irrigation or other purposes, or may provide for the payment of such expenditures by assessments therefor, or by both such tolls and assessments; **if by assessment, such levy shall be made upon the completion and equalization of the assessment roll in accordance with the benefit** received; and the board shall have the same powers and functions for the purposes of such levy as are now possessed by boards of county commissioners in this state, and such assessment shall be collected as provided in this chapter.

46A-7-2. Expenses for completion of irrigation system -- Issuance of additional bonds or levy of assessment. In lieu of the issuance of additional bonds as authorized by § 46A-6-45, the board of directors may provide for the completion of the irrigation system of the district by the levy of an assessment therefor, in the same manner in which the levy of an assessment is made for the other purposes provided for in this chapter.

46A-7-3. Special assessment -- Submission of question of levy by board of directors, notice of election -- Authorized by majority of votes for assessment -- Making of assessment by board, amount -- Entry upon assessment roll and upon tax list by county auditor -- Collection, laws governing. The board of directors may

at any time, when in its judgment deemed advisable, call a special election and submit to the qualified electors of the district the question whether or not a special assessment shall be levied for the purpose of raising money to be applied for any of the purposes provided for in chapters 46A-4 to 46A-7, inclusive. Such election must be called upon the notice prescribed, and the same shall be held and the result thereof determined and declared in all respects in conformity with the provisions of said chapters. The notice must specify the amount of money proposed to be raised, and the purpose for which it is intended to be raised, at such election; the ballots shall contain the words "Assessment -- Yes," "Assessment -- No." If a majority of the votes are "Assessment -- Yes," the board shall, at the time of the annual levy thereunder, levy an assessment sufficient to raise the amount voted; the assessment so levied and computed shall be entered upon the assessment roll and upon the tax list by the county auditor and collected at the same time and in the same manner as other assessments, and all revenue laws of this state for the collection of real estate taxes and sale of land for taxes are hereby made applicable to the assessment herein provided for; and when collected such assessment shall be paid over by the county treasurer to the district treasurer for the purpose specified in the notice of such special election.

46A-7-3.1. Eligibility to vote on special assessment. Only those electors whose land may be specially assessed to raise funds are eligible to vote in an election held pursuant to the provisions of § 46A-7-3.

46A-7-4. Apportionment of benefits accruing to land by irrigation works -- Determination by director of equalization. The director of equalization must, between the first Monday in May and the first Monday in July in each year, examine each tract or legal subdivision of land in an irrigation district including entered and unentered public lands of the United States, subject thereto under the act of Congress

approved August 11, 1916, entitled "An act to promote the irrigation of arid lands," and shall determine the benefits which will accrue to each of such tracts or subdivisions on account of the construction or acquisition of such irrigation works, and the amount so apportioned or distributed to each of such tracts or subdivisions as finally equalized or confirmed by the court, as the case may be, shall be and remain the basis for fixing the annual assessments levied against such tracts or subdivisions in carrying out the purposes of chapters 46A-4 to 46A-7, inclusive.

46A-7-5. Apportionment of benefits to land by irrigation works -- Assessment made in lieu of bonds or other authorized obligations -- Assessment not invalid because in name of wrong person. Whenever any assessment is made either in lieu of bonds, or in any annual levy for raising the interest on bonds, or any portion of the principal or the expenses of maintaining the property of the district or any special assessment voted by the electors, it shall be spread upon the lands in proportion to the benefits received, and the whole of the assessment of benefits shall equal the amount of bonds or other obligations authorized at the election last above mentioned. The assessment of any property in the name of the wrong person shall in no way invalidate the assessment thereof.

46A-7-6. List of apportionment, making by director of equalization, contents -- Map of each subdivision, rate of apportionment -- Copy filed with department of environment and natural resources. The director of equalization shall make or cause to be made a list of such apportionment or distribution, which list shall contain a complete description of each subdivision or tract of land of such district, with the amount and rate per acre of such apportionment or distribution of cost and the name of the owners thereof; or he may prepare a map on a convenient scale showing each of such subdivisions or tracts with the rate per acre of such apportionment entered thereon. Where all lands on

any map or section of a map are assessed at the same rate, a general statement to that effect shall be sufficient. Such list or map shall be made in duplicate, one of which shall be filed in the office of the Department of Environment and Natural Resources and the other shall remain in the office of the board of directors for public inspection.

46A-7-7. Assessments under contracts with United States for supply of water for irrigation or construction of works -- Duty of board of directors to meet obligations -- Apportionment of benefits unnecessary. Whenever any irrigation district, organized under the laws of this state, shall have contracted with the United States for a supply of water for the irrigation of lands within the district, the construction of irrigation or drainage works, or the operation thereof, or both, or other purposes authorized by law, the board of directors is authorized to make the assessments intended to meet the obligations of the district under such contract in accordance with the method and terms as provided by such contract, and **no apportionment of benefits by the director of equalization shall be necessary when so provided in said contract.**

46A-7-8. Delivery of assessment roll to secretary -- Notice of equalization meeting -- Time for meeting -- Roll available for inspection. On or before the fifteenth day of July in each year, the director of equalization must complete his assessment roll and deliver it to the secretary of the board of directors, who must immediately give notice thereof and of the time the board of directors, acting as a board of equalization, will meet to equalize assessments, by publication once each week for at least two consecutive weeks in a newspaper published in each of the counties comprising the district. The time fixed for the meeting shall not be less than ten nor more than twenty days from the first publication of the notice; and in the meantime the assessment rolls must remain in the

office of the secretary for the inspection of all persons interested.

46A-7-9. Board of equalization, board of directors constituting -- Meetings, purpose -- Apportionment of benefits and assessments -- Duties of secretary. Upon the day specified in the notice required by § 46A-7-8, for the meeting of the board of directors, which is hereby constituted a board of equalization for that purpose, it shall meet and continue in session from day to day, as long as may be necessary, not to exceed ten days exclusive of Sundays, to hear and determine such objections to the apportionment of benefits and assessments as may come before it; and the board may change the apportionment of benefits and assessments as may be just. The secretary of the board shall be present during its session and note the changes made in the apportionment of benefits and assessments of property, and in the names of the persons whose property is assessed; and within twenty days after the close of the session he shall have the total values and assessments, as finally equalized by the board, extended into columns and added.

46A-7-10. Acreage assessment to cover bond and contract payments -- Special fund. The board of directors shall then levy an assessment against the acreage of the district sufficient to raise the annual interest on the outstanding bonds, to pay the principal coming due on the outstanding bonds prior to the next levy, and to make all payments due or to become due the ensuing year to the United States under any contract between the district and the United States, which, when collected shall be called the "bond and United States contract fund of irrigation district."

46A-7-11. Assessment for operation, salaries and expenses. If the board of directors deems it necessary, it may levy an assessment for the care, operation, and maintenance of irrigation works already constructed

and for the payment of salaries of officers and general expenses, which assessment shall be called the "general fund of irrigation district."

46A-7-12. Assessments -- Rate of levy, computation. In all assessments for the purpose of chapters 46A-4 to 46A-7, inclusive, the rate of levy in any one year shall be computed by adding to the amount or amounts desired to be raised ten percent, to cover anticipated delinquencies, and then dividing the sum thereof by the aggregate of the benefits apportioned for such year as in this chapter provided.

46A-7-13. District under contract with United States -- Different deficiency assessment -- Governed by provisions of approved contract. Where an irrigation district organized under the laws of this state is under contract with the United States providing for a different deficiency assessment than is prescribed in § 46A-7-12, the provisions of such contract shall govern such district in making its assessments, provided such contract has been approved by the necessary majority vote of the owners of the land affected at an election properly called for such purpose.

46A-7-14. Neglect or refusal of board of directors to make assessment -- Adoption of assessment for preceding year. In case of the neglect or refusal of a board of directors of any irrigation district to cause an assessment and levy to be made as in this chapter provided, the assessment of property made for the preceding year shall be adopted and shall be the basis of assessment for the district, and the county commissioners of the county in which the district was originally organized shall cause an assessment roll of such district to be prepared and shall make the levy for the payment of the principal and interest on bonds and to meet all payments due or to become due the ensuing year to the United States under any contract between the district and the United States, and to meet the expenses for organizing and operating such

district, in the same manner and with like effect as if the same had been made by such board of directors; and the expense incident thereto shall be borne by such district.

46A-7-15. Cancellation of levy or assessment -- Modification of contract between United States and district, elimination of charges, change in time of payment of charge. In any cases where the board of directors has made a levy or assessment under any contract between the United States and the district, and the United States shall thereafter modify or supplement such contract or agreement so as to eliminate certain charges under said contract or agreement or so as to make such charges due at a later date or dates than originally provided in said contract or agreement, said board is empowered to direct the cancellation of said levy or assessment theretofore made to raise funds to pay the United States that are under such modification or supplemental contract or agreement made due and payable at a later date or dates.

46A-7-16. Assessments -- Computation and entry by secretary -- Certification -- Tax list. The secretary of the board of directors must compute and enter in separate columns of the assessment books the respective sums of dollars and cents in each fund, together with the sum payable by each tract obligated to the United States by contract, if any, for the payment of water charges to be paid on the property therein enumerated; and the secretary shall certify to the auditor of the county in which the land is located the amount of such taxes in each fund levied upon each tract of land by such board, including sums due the United States, and the auditor shall enter the amount of each in separate columns of the tax list of his county; and all tax lists when delivered to the county treasurer shall contain all taxes in each fund levied on each tract of land by the board of such irrigation district.

46A-7-17. Assessments levied for bond and United States contract fund -- Collection by county treasurer. The assessments levied for the bond and United States contract fund mentioned in § 46A-7-10 shall be collected by the county treasurer at the same time and in the same manner as all other taxes are collected in this state.

46A-7-18. Capital projects fund tax -- Interest coupons received in payment. Such county treasurer shall receive in payment of the district capital projects fund tax, for the year in which such taxes were levied, interest coupons issued by such irrigation district, due during such year and payable from such fund, the same as so much lawful money of the United States, if such interest coupons do not exceed the amount of the district capital projects fund which the person tendering the same owes.

46A-7-19. Assessments levied for general fund -- Due date -- Warrants received in payment. The assessments levied for the general fund mentioned in § 46A-7-11 are due to the county treasurer on the thirty-first day of December next following the levy of the assessments and on the first day of May of the year after which the assessments have been levied for the general fund. All unpaid assessments for the fund become delinquent and draw interest and penalty as follows: on the first day of May and on the first day of each succeeding month, until paid, the Category D rate of interest as established in § 54-3-16 of the amount remaining unpaid shall be added thereto and collected by the treasurer. The county treasurer shall receive in payment of the general fund tax, for the year in which the tax is levied, warrants drawn against the general fund for such year, if the warrants do not exceed the amount of the general fund tax which the person tendering it owes.

46A-7-20. Taxes received for capital projects and general funds -- Remittance by county treasurer. All such taxes collected or received for the district capital projects and general funds, either in money, interest coupons, or warrants on general fund, by the treasurer of any county other than the one in which the district was originally organized shall be remitted by him to the treasurer of the county in which the district was originally organized, such remittance to be made on the fifth day of each and every month. All such taxes collected or received for the general fund of such district by the treasurer of the county in which the district was originally organized shall be paid to the treasurer of such irrigation district, upon an order signed by the president and secretary of such district, and all warrants received in payment of general fund taxes as provided in § 46A-7-19 may be turned over, as so much money, to the district treasurer on such order.

46A-7-21. Liability of county treasurer for taxes from assessments. All such taxes collected and paid to the county treasurer shall be received by such treasurer in his official capacity and he shall be responsible for the safekeeping, disbursement, and payment thereof, the same as for other money collected by him as such treasurer.

46A-7-22. Assessments against acreage of district within United States reclamation project -- Collection. In addition to other provisions of the laws of this state for the collection of assessments levied against the acreage of an irrigation district, the board of directors of any irrigation district, organized within a United States reclamation project is hereby authorized and empowered to make collections of all assessments levied against the acreage of said irrigation district through the office of said board.

46A-7-23. Notice of decision to collect assessments against acreage in United States reclamation project.

Whenever a board of directors decides by unanimous vote to make collections of assessments, as provided by § 46A-7-22, it shall file notice thereof in the office of the county auditor of each county in which the district is situated.

46A-7-24. Decision of board of directors to collect assessments against acreage within United States reclamation project -- Certificate, time for filing -- Payment of assessments, time. The certificate required in § 46A-7-23 shall be filed as aforesaid before the first day of May of the year in which the change of place of payment of such assessments is desired to be effectuated. Thereafter all assessments levied against the acreage of such irrigation district shall be collected by, and payable to, the treasurer of said irrigation district, at the office designated by the board of directors of said irrigation district at the same time and in the same manner as all other taxes and assessments are collected in this state.

46A-7-25. Collection of assessments against acreage within United States reclamation project -- Single assessment for operation and maintenance funds and contract funds, time for payment. In districts which are following the alternative method of collecting assessments, as provided for by § 46A-7-22, a single assessment, to include operation and maintenance funds and contract funds, may be made, and such assessment so levied shall become due and payable on January first next following the levy of such assessment, and become delinquent if not paid in full on or before May first following such assessment and shall draw interest and penalty as provided in § 46A-7-19.

46A-7-26. Collection of assessments against acreage within United States reclamation project -- Duty of director of equalization, determination of benefits, fixing annual assessments, completion and delivery of assessment roll to secretary. In districts which are

following the alternative method of collecting assessments, as provided for by § 46A-7-22, the director of equalization must, between the first day in September and the first day of November, in each year, make the examination and determine the benefits and fix the annual assessments to be levied against the tracts in said district, as provided for and in § § 46A-7-4 to 46A-7-7, inclusive. The director of equalization must, on or before the fifteenth day of November in each year, complete his assessment roll and deliver it to the secretary of the board of directors, who must then proceed to give notice thereof as provided in § 46A-7-8.

46A-7-27. Filing of certificate of decision to collect assessments against acreage within United States reclamation project, effect -- Secretary relieved of duty to certify to county auditor amount of assessments -- County auditor relieved of duty of entering sums on county tax list -- Treasurer of irrigation district acts in lieu of county auditor. When the written certificate of said board of directors is filed as provided in § 46A-7-23, then and thereafter the secretary of the board of directors of said irrigation district will not be required to certify to the county auditor the amount of such assessments, including sums due the United States, that have been levied against the acreage of said district, by said board of directors, as otherwise provided by the laws of this state, and said auditor will not be required to enter the amount of each of said sums in separate columns of the tax lists of the county; and the tax lists, when delivered by the auditor to the county treasurer, need not contain the assessments levied on the tracts of land within said irrigation district by the board of directors of said irrigation district as otherwise provided by the laws of this state, but said secretary of the board of directors of said irrigation district shall certify to the treasurer of said irrigation district the amount of such assessments, including sums due the United States, who shall act in lieu and in place of the county auditor

in entering the amount of assessments in each fund levied upon each tract of land by said board of directors, including sums due the United States, in separate columns of a book to be known as "irrigation district assessment collection book," which book shall be kept by the treasurer of said district as a public record of said irrigation district, and said treasurer shall thereafter act in lieu of and in place of the county treasurer in sending notices, collecting, and receipting for such assessments.

46A-7-28. Collection of assessments against acreage within United States reclamation project -- Duties of treasurer of district, certification of delinquencies. The treasurer of any irrigation district, following the method provided in § § 46A-7-22 to 46A-7-27, inclusive, for the collection of assessments, shall certify any delinquent assessment to the auditor of the county in which the land on which the delinquent assessment is situated on or before the tenth day of November each year. The auditor shall enter the amount due in separate columns of a supplementary tax list, to be known as "irrigation district delinquent assessment list" of the county and deliver a copy of the same to the county treasurer for collection in the same manner as all other taxes and assessments are collected in this state.

46A-7-29. Collection of assessments against acreage within United States reclamation project -- Reversion to former method of collection, filing with county auditor certificate of change, collection through office of county treasurer. Any irrigation district, organized within a United States reclamation project, which may or shall choose to make collection of its assessments as provided in § § 46A-7-22 to 46A-7-28, inclusive, may revert back to the prior method of making collection through the county treasurer's office by filing with the county auditor of the county or counties stated in § 46A-7-23, within which said irrigation district is located, a certificate signed by a majority of

the board of directors of said irrigation district stating that a majority of the board of directors of said irrigation district desires to make such change. Thereupon, and after the filing of said certificate, beginning with the first day of May of the year in which such change is desired to be made, all requirements of the laws of this state for the collection of taxes and assessments through the county treasurer's office shall be complied with to the extent and purpose as though § § 46A-7-22 to 46A-7-28, inclusive, had not been enacted.

46A-7-30. Assessments -- Payment under protest, disposition of money. When any person against whose property any assessment has been made shall pay such assessment under protest, as provided by law for general taxes, the board of directors of the irrigation district may pass upon and make orders disposing of the money so paid under protest to any county treasurer in the same form and manner as provided by law, and such proceedings shall be had as by such law provided insofar as the same is applicable.

46A-7-31. Refund of taxes or assessments -- Conditions precedent, filing tax receipt showing payment under protest, affidavit stating grounds for refund. No taxes or assessments shall be ordered refunded unless the person complaining shall file in the office of the secretary of such district a copy of his tax receipt, showing the same paid under protest, together with a sworn affidavit in writing showing one of the following reasons why such tax or assessment should be refunded: (1) That the land upon which such assessment was levied is not within the boundaries of the district; (2) That the land is exempt by law, setting forth the reason therefor; or (3) That by reason of injury through seepage or subirrigation the land could not now be benefited by irrigation, or that the land is not susceptible of irrigation from the canal of the district.

46A-7-32. Relevy of invalid, void or defective special tax or assessment -- Assessment not invalidated by erroneous extension -- Correction by board of directors. Whenever any special tax or assessment levied upon any property located within the irrigation district is found to be invalid and uncollectible, or shall be adjudged to be void by a court of competent jurisdiction, or paid under protest and recovered by suit, because of any defect, irregularity or invalidity in any of the proceedings or on account of the failure to observe and comply with any of the conditions, prerequisites and requirements of any statute or resolution, the board of directors shall have the power to relevy the same upon said property in the same manner as other special taxes and assessments are levied, without regard to whether the formalities, prerequisites or conditions prior to equalization have been had. If in any case there shall be an erroneous extension of the water charge assessment or assessments, either as against the wrong tract of land or against the wrong person, the assessment shall not for that reason be invalidated, but the district board upon the discovery of such error shall have full power to release, abate, refund, or otherwise correct such assessment or assessments by directing the county auditor to release, abate, refund, or otherwise correct such assessment and to spread the assessment against the proper person or against the correct tract, or to abate the same, or to refund the water charge assessment or assessments erroneously collected, as the case may require.

46A-7-33. Assessment -- Lien against property assessed -- Interest -- Sale of land. All assessments on real property and to the extent provided by the act of Congress of August 11, 1916, on entered and unentered public lands, are a lien against the property assessed from and after the day the real estate taxes become a lien, and shall draw interest at the same rate and from the same date as unpaid real estate taxes, and such lien is not removed until the assessments

are paid or the property sold for the payment thereof, and it shall be the duty of the county treasurer to collect such assessments in the same manner as other taxes against real estate are collected, and the revenue laws of the state for the collection of taxes and sale of land for such taxes are hereby made applicable to the collection of assessments under this chapter.

46A-7-34. Bond series lien preferences -- Federal contract payments lien preferences. The lien for the bonds of any series may be on a parity with or a preferred lien to that of any subsequent series, and the lien for the payments due to the United States under any contract between the district and the United States, accompanying which bonds have not been deposited with the United States, may be a preferred lien to that of any issue of bonds or any series of any issue subsequent to the date of such contract.

46A-7-35. Application of funds from assessment and levy -- Priority in distribution. The funds arising from assessment and levy in any year shall be devoted to the obligations of the district payable from such funds and, as to all obligations payable from the bond and United States contract fund, shall be so devoted in the order of priority of the obligation.

46A-7-36. Delinquent assessments -- Compromise, abatement, or reallocation. In any case where the board of directors determines that assessments levied before February 25, 1933 against the lands of the district for either its general fund or bond and United States contract fund are delinquent to such an extent that the enforcement of the payments thereof through tax title proceedings is impracticable, and further determines that it is to the benefit of the irrigation district to compromise, abate, or reallocate any part or all of such assessments, the board is hereby authorized and empowered to compromise, abate, or reallocate any or all of said delinquent assessments, subject to the following conditions: (1) All claims or

obligations against the district's general fund for all years in which such assessments were levied must have been paid in full prior to such compromise, abatement, or reallocation, or if not paid in full, the owners of such obligations must have consented in writing to the proposed compromise, abatement, or reallocation;

(2) Where the district's bond and United States contract fund would be affected by such compromise, abatement, or reallocation, the written consent of the United States, if the assessments were levied to meet contract obligations to the United States, or of all bondholders, if the assessments were levied to meet bonded indebtedness or interest thereon, shall be obtained to each such proposed compromise, abatement, or reallocation, before it becomes effective, or such compromises, abatements, or reallocations may be made, without the individual consent of the United States or bondholders, where made in pursuance of the terms of a contract between the district and the United States or such bondholders. The board is hereby vested with authority to execute such contract with the United States or the district bondholders. This section shall not limit the rights which any irrigation district has under the existing laws to compromise, abate, or refund district assessments but shall be cumulative thereto.

46A-7-37. Delinquent assessments -- Sales of land, bidding in by board of directors, striking off land to district, certificate of tax sale. At all sales of all lands for delinquent taxes where all, or a portion, of such delinquent taxes are taxes and assessments levied and assessed by any irrigation district against the lands to be sold, the directors, if there be no other bidder for such land at such tax sale, may bid therefor the total amount of all delinquent taxes and assessments, penalty, and interest against such land, and thereupon the county treasurer shall strike off said lands to such irrigation district and issue certificate of tax sale to said irrigation district the same as such

certificates of tax sales are issued to other purchasers.

46A-7-38. Special revenue fund for purchase of tax certificates and titles -- Purpose -- Creation by resolution of board of directors -- Composition of fund -- Use for payment of taxes, interest, and penalties. For the purpose of paying such taxes, assessments, interest, and penalties, the directors shall have the power and authority to create by resolution a fund to be known and designated as the "special revenue fund for the purchase of tax certificates and titles," and to provide funds for such special revenue fund by levy, bond issue, or otherwise, and the district may pay such taxes, assessments, interest, and penalties by issuing a warrant to the county treasurer against such fund, if there shall be sufficient money in such fund to pay the same in full upon demand.

46A-7-39. Taxes paid by district -- Distribution of tax by county treasurer -- Redemption or sale of property by district, proceeds credited to special revenue fund for purchase of tax certificates and titles. When taxes are paid by the district as in this chapter provided, the county treasurer shall distribute that portion of said tax belonging to the irrigation district, to the several funds as designated in the tax levy and assessment. At the time of redemption, or of the sale by the district of the tax sale certificate, or of the property obtained through such certificate, such funds as are realized must be deposited with the county treasurer, and he shall credit the proceeds of such sale to the special revenue fund specified in § 46A-7-38.

46A-7-40. Expenditure of special revenue fund for purchase of tax certificates and titles, purposes -- Fund inactive on resolution of board of directors, balance transferred to debt service fund. No expenditures shall be made from the special revenue fund except for the purposes as specified in § § 46A-7-38 and 46A-7-39, and when, by resolution of the board of directors, such fund shall be deemed inactive,

the balance remaining in said fund shall be transferred to a debt service fund to be applied upon any indebtedness which may have been incurred by the district by reason of the creation of such special revenue fund, if any there may be, otherwise to the general fund of the district.

46A-7-41. Tax sale certificate issued to county -- Purchase by district -- Purchase price, payment by board of directors. Any irrigation district may purchase the certificate of tax sale issued to any county for land sold at tax sale against which any of its taxes and assessments are delinquent, or, if deed therefor has been issued to the county, may purchase such lands from the county by paying to the county treasurer all state, county, first or second class municipality, school district, and other delinquent taxes, together with penalty, interest, and costs of publication and sale. Such payment shall be made by the directors issuing and delivering to the county treasurer a warrant drawn against the special revenue fund, if there shall be sufficient money in said fund to pay the same in full upon demand, and thereupon such treasurer shall assign such certificate of tax sale to such irrigation district, or the commissioners of the county shall convey such lands to said district.

46A-7-42. Land sold at tax sale to district -- Tax deed, issuance to holder of certificate of tax sale in the absence of redemption. When there has been no redemption of the land so sold at tax sale to an irrigation district, or to any other person, or of the land struck off to the county for which a certificate of sale has been assigned to an irrigation district, or to any other person, in the manner and within the time prescribed for the redemption of lands from such tax sales, the county treasurer shall issue a tax deed therefor to such irrigation district, or other holder of a certificate of sale. The holder of such certificate of tax sale, whether said holder be an irrigation district or an individual, may at any time after the expiration of two

years from the date of sale, if the same has not been redeemed within said period, apply to the county treasurer, as provided by law, for the issuance of a tax deed to said property, and upon such application the county treasurer shall issue such tax deed in manner and form provided by law to said holder.

46A-7-43. Tax deed issued to district -- Sale of land by board of directors, public or private sale, price. After the issuance of any such tax deed to an irrigation district, the directors shall have power to sell and convey the land so purchased, or any part thereof, at either public or private sale, whether the price received therefor equals the amount of delinquent taxes, assessments, penalties, interest, and costs against said lands or not; but if such lands be offered for sale at public sale, such directors may reject any and all bids thereon, and no such lands shall be sold by such directors at private sale until the same shall have been offered for sale at public sale, nor at a price less than the highest price bid therefor at the public sale at which such lands were offered, and if no bid is received for such lands when the same are offered for public sale the said directors may then sell the same in such manner and for such price as in their judgment they shall deem to be for the best interests of said district.

46A-7-44. Land not subject to sale for delinquent taxes in the absence of delivery of water. Sections 46A-7-37 to 46A-7-43, inclusive, shall apply only when or after such irrigation district shall have commenced delivery of water to any lands within such irrigation district.

46A-7-45. Warrants of districts -- Limitation on amount issued, exception. No irrigation district shall in any year issue warrants in excess of ninety percent of the levy for such year, except that in case of due and outstanding obligations against the district on account of operation, maintenance, and current

expenses contracted prior to the year in which any levy is made, the district board shall have power to make an additional levy, not to exceed one dollar per acre upon all irrigable lands within the district, to create a special fund for the payment of past due obligations.

46A-7-46. Claims against fund fully paid -- Transfer of unused balance. Whenever the claims or obligations against any fund for any year are fully paid, the board of directors shall have power to transfer any unused balance to any other fund for the preceding or succeeding year.

EXHIBIT 4

UNITED STATES

DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION

Form Approved by Department of the Interior, April 4, 1949

Belle Fourche Irrigation Project, South Dakota

AMENDATORY CONTRACT BETWEEN THE UNITED STATES OF AMERICA AND THE BELLE FOURCHE IRRIGATION DISTRICT, SOUTH DAKOTA

INDEX

Article No.	Title	Page No.
1	Preamble	1
2-4	Explanatory Recitals	1-2
5	Definitions	2
6	Construction Charge Obligation	3-4
7	Payment of District Construction Obligation under Variable Formula	4-6
8	Operation and Maintenance of Irrigation Works	6-7
9	Reserve Fund	7-8
10	District Budget and assessments	8-9
11	Charges To Be Assessed in Accordance with Land Classification	9
12	State, County, and District Lands	9-10
13	Water Service to Non-Assessable Lands	10
14	District to Receive Water	10
15	Assessment of Johnson Lateral and Inlet Canal lands	10-11
16	District Permitted to Make Minor Changes in Classification	11
17	Penalty for Delinquent Payments	11

18	Notice of Costs and Payment by District	11-13
19	Rentals to be Credited	13-14
20	Defaults	13-15
21	Agreed Charges A General Obligation of the District	15
22	Application of Payments	15
23	Consent by the Secretary to Compromising Delinquent Assessments	15-16
24	District to Keep Books and Records and Report Crop and Other Data	17
25	Access to Books and Records	17
26	Selection of Manager	17-18
27	Excess Lands	18
28	District to Receive Benefits of Subsequent Legislation	18
29	Computation of Costs	18-19
30	Rules and Regulations	19
31	Contract a Modification of Water Right Application	19-20
32	No Liability for Drought, Etc	20
33	Waste, Seepage, Spring and Percolating Waters	20
34	Assignment Limited – Successors and Assigns Obligated	20-21
35	Changes in District Organization	21
36	Keyhole Dam and Reservoir	21
37	Contingent upon Appropriations or Allotment of Funds	21
38	Discrimination against Employees or Applicants for Employment Prohibited	22
39	Officials Not to Benefit	22
40	Contract of 1923 Modified	22
41	Confirmation of Contract	22-23

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Belle Fourche Irrigation Project, South Dakota

AMENDATORY CONTRACT BETWEEN THE UNITED STATES OF AMERICA AND THE BELLE FOURCHE IRRIGATION DISTRICT, SOUTH DAKOTA

1. THIS AMENDATORY CONTRACT, made this 29th day of November, 1949, between the UNITED STATES OF AMERICA (hereinafter called the United States), acting through the Secretary of the Interior (hereinafter called the Secretary), and pursuant to the Federal Reclamation Laws, and the Belle Fourche Irrigation District, an irrigation district organized and existing under and by virtue of the laws of the State of South Dakota (hereinafter called the District), with its principal place of business and office at Newell, South Dakota,

WITNESSETH, THAT:

Explanatory Recitals

2. WHEREAS, the parties hereto, under date of July 16, 1923, entered into a contract, hereinafter referred to as the contract of 1923, by which the United States agreed to furnish a water supply for the District lands, and the District agreed to pay construction and operation and maintenance charges to the United States therefor; and

3. WHEREAS, the contract of 1923 was subsequently modified and amended by the contracts dated October 4, 1927, December 21, 1929, September 1, 1931, May 2, 1933, July 21, 1933, February 5, 1934, February 5, 1935, August 9, 1935, September 30, 1938, October 22, 1943, and November 23, 1948; and

4. WHEREAS, it is necessary and desirable to the mutual interest of the parties to modify and amend the contract of 1923, as heretofore amended;

NOW, THEREFORE, for and in consideration of the mutual and dependent covenants herein set forth, it is hereby agreed as follows:

Definitions

5. Where used in this contract, the terms

a. Secretary" or "contracting officer" or either of them, shall mean the Secretary of the Untied States Department of the Interior, or his duly authorized representative,

b. "Federal Reclamation Laws" shall mean the Act of June 17, 1902 (32 Stat. 388), and all acts amendatory thereof and supplementary thereto, including particularly, without limitation of the foregoing, the Reclamation Project Act of 1939 (53 Stat. 1187), as amended,

c. "Year" shall mean the period January

d. Irrigation season" shall mean the period April 15th through November 30th within any year,

e. "District water supply" shall mean the estimated amount of water available for the irrigation of lands under the District, for any irrigation season, as determined by the Secretary. Such amount shall, insofar as practicable, be that quantity which may be applied beneficially in accordance with good usage in the irrigation of lands under the District. In case of a shortage at any time, such amount shall be an equitable proportionate share of the water for irrigation actually available for all of the area being watered from the same source of supply.

f. "District irrigation works" shall mean the diversion dam, inlet canal, Belle Fourche Dam and Reservoir, canals, laterals, drains, telephone works, and all other works and property, real and personal, of the "United States, used in connection with the Belle Fourche Irrigation Project.

Construction Charge Obligation

6. (1) The total adjusted construction charge obligation which the District assumes and agrees to pay the United States under the provisions of this contract is hereby fixed as of midnight, on December 31, 1948, as follows:

a. Primary Construction cost $3,531,575.18
Supplemental Construction cost ..1,106,660.89
O & M funded.....570,194.90
Interest and penalties funded.....106,382.63
Total $5,314,813.60
Less misc receipts & Rentals .....(22,908.52)
Less contributed funds .....(5,324.86)
Less charge-off (Act of May 25,1926)
(379,031.58)
Less payments & credits thru 12/31/48
.....(1,186,581.62)
Less charge-off, Willow Creek Extension
.....(273,667.90)
Less charge-off, land classification 12/27/48
Primary construction charges 13,604.7 acres at
43.90.....(597,246.33)
Share of drainage costs 13,604.7 acres at
$10.17.....(138,359.80)
Total payments and deductions...(2,603,120.61)
Total unaccrued adjusted
.....obligation.2,711,692.99

b. The District further assumes and agrees to pay to the United States under the provisions of this contract all costs that may be incurred, not to exceed four hundred thousand dollars ($400,000), by the Untied States for rehabilitation and betterment of the District irrigation works, it being understood that such expenditures shall be for such rehabilitation and betterment work as may be determined to be

necessary by the Secretary with the approval of the District's Board of Directors. The performance by the Untied States of rehabilitation and betterment work shall be subject to appropriations being made therefor by the Congress. All costs so incurred shall be added to the District's construction charge obligation and shall be repaid as a part thereof and in the same manner.

c. The payment of all construction charges against the 3420.7 acres of land classified as Class V land in the land classification schedule referred to in Article 11 hereof shall remain suspended until the Secretary shall reclassify said land. Such reclassification shall be completed within five (5) years after the effective date of this contract. Upon reclassification such land as the Secretary determines to be productive shall be returned to its appropriate classification whereupon it shall be assessable in the same manner as other lands are assessed under the terms of this contract. The District's construction charge obligation shall be decreased by the sum obtained by multiplying the total acreage determined by the Secretary to be permanently unproductive by the sum of $43.90 per acre for construction charge plus $10.17 per acre for drainage costs and such lands shall thereupon be treated in the same manner as to other permanently unproductive lands.

(2) The construction charge obligation shall be paid in successive annual installments until the full amount of the obligation has been paid. The first half of such annual installment shall be due and payable on June 30 and the second half on December 31 of the first calendar year after the effective date of this contract, and thereafter one half of each annual installment as herein set forth shall be payable on June 30 and December 31 respectively of each succeeding year. Each annual installment shall be thirty-eight thousand seven hundred dollars ($38,700), until the full amount under this contract has been paid: Provided, that the District may elect to pay annual installments in accordance with the variable formula as described in Article 7 below.

Payment of District Construction Obligation under Variable Formula

7. a. On or before February 15 of any year after the first year and during the term of this contract the District Board of Directors may notify the Secretary in writing that, beginning with the next succeeding calendar year, the District elects to make payment of its annual installments in accordance with a variable formula: Provided, That once the District Board of Directors notifies the Secretary of the District's election to make payment in accordance with the variable formula, all annual installments thereafter shall be paid in accordance with such variable formula. On or before March 15 of the year in which the Secretary receives notice of such election by the District, and on or before March 15 or every year thereafter during the term of this contract, the Secretary shall announce the amount of the annual installment payable under this subsection (a) shall be determined by multiplying the product of the base charge and the price index factor by the agricultural parity ratio:

(1) The "base charge" shall be Thirty-eight Thousand Seven Hundred Dollars ($38,700).

(2) The "price index factor" is that number which represents the relationship between the current prices received for farm products and the average prices for farm products during the period 1939-1944 as determined by the Secretary.

(3) The "agricultural parity ratio" is the national agricultural parity ratio as conclusively determined by the Secretary for the year preceding the notice year.

(4) In making the determination required in a (2) and a (3) above, the Secretary shall use the commodity price indexes and the national agricultural parity ratio as determined by the Secretary of Agriculture under the provisions of Title II of the Agricultural Act of 1948 (Public Law 897, 80th Congress, 2d Session), as it may be amended from time to time. If the commodity price

indexes and national parity ratio, which are basic to the determination of the annual installment under (a) of this Article, are not available for any year the annual installments due under this contract shall be Thirty-eight Thousand Seven Hundred Dollars ($38,700).

b. Annual installments under subsection (a) above shall be not more than one hundred seventy-five percent (175%) of the base charge, and not less than twenty-five percent (25%) of the base charge.

Operation and Maintenance of Irrigation Works

8. a. The District shall continue to care for, operate, and maintain the district irrigation works without cost or expense to the Untied States and in full compliance with the Federal Reclamation Laws, the rules and regulations of the Secretary pursuant thereto, and the terms of this contract. The District's care, operation, and maintenance of the district irrigation works shall be subject to the supervision of the Secretary, and shall be in a manner that will insure that such woks shall remain in good condition for the supply and distribution of irrigation water.

b. No substantial change will be made by the District in any of the district irrigation works without first obtaining written consent of the Secretary. The District shall make promptly any and all repairs to the district irrigation works, which, in the opinion of the Secretary, are necessary. If, in the opinion of the Secretary, any part to the district irrigation works is for any cause unfit for service, he may order the water shut off and turned out until, in his opinion, such part of the works is put in proper condition of service. In case of neglect or failure of the District to make such repairs, the Secretary may cause the repairs to be made and the cost thereof, as determined by the Secretary, shall be paid by the District to the United States as provided in Article 18c.

c. The Secretary shall cause to be made,

from time to time, reasonable inspection to the district irrigation works. The actual cost of such inspection, as determined by the Secretary, shall be paid by the District to the United States as provided in Article 18c.

d. In the event the District is at any time in default of any of its obligations to the United States under this contract, or is found by the Secretary to be operating the district irrigation works, or any part, thereof, in violation of the provisions of this contract, then at the election of the Secretary, the United States may take over from the District the care, operation, and maintenance of the said works, by giving written notice to the District of such election and of the effective date thereof. Thereafter during the period of Government operation, the District shall pay to the United States the cost of operation and maintenance of the district irrigation works, as provided in Article 18b. Payment shall be in advance of the delivery of water. Such works or any part thereof may be retransferred to the District at the election of the Secretary, by notice, thereof to the District Board of Directors in writing on or before April 1 of any year. The notice shall provide that the District shall accept the transfer as of December 31 next succeeding such notice. The District shall surrender possession and accept the re-transfer on being given the notice provided for herein.

d. Title to the district irrigation works shall be and remain in the United States until the construction charge obligation of the District and all other obligations of the District as prescribed in Article 18 have been fully discharged and until otherwise provided by Congress, notwithstanding that such works are transferred to the District for care, operation, and maintenance.

Reserve Fund

9. a. There shall be established by the District a reserve fund, to be maintained apart from its other funds, to be available for the purpose of meeting emergency costs of reconstruction, maintenance or repair of the district irrigation works. The reserve fund

shall be used only for the purpose provided for in this article, upon the request of the Board of Directors and with the written authorization of the Secretary. Such reserve fund shall be accumulated as follows:

b. All sums realized by the District out of the assessments, water rentals, and charges levied against the water users which assessments, water rentals, and charges are delinquent on the effective date of this contract.

c. The first annual assessment or charges levied against the lands of the District after the effective date of this contract shall be sufficient to enable the District to deposit in the reserve fund during the succeeding calendar year the sum of Two Thousand Five Hundred Dollars ($2,500). Thereafter there shall be included in each annual assessment a like sum of Two Thousand Five Hundred Dollars ($2,500): Provided, however, That no assessment for the reserve fund need be made whenever, as of the time the annual assessment is levied, such reserve fund has reached or exceeded a total of Thirty-five Thousand Dollars ($35,000): And provided further, That whenever, as of the time the annual assessment is levied, the reserve fund shall be less than Thirty-five Thousand Dollars ($35,000) there shall be included in the annual assessment the sum of Two Thousand Five Hundred Dollars ($2,500) for deposit in the reserve fund.

District Budget and Assessments

10. a. On or before June 1 of the first year following the effective date of this contract and on or before June 1 of each year thereafter during the term of this contract, the District shall deliver to the Secretary the District's operating budget for the succeeding calendar year. The budget shall include (1) the amount of the annual construction charge obligation, (2) the amount to be deposited in the reserve fund, (3) a detailed estimate of the anticipated operation and maintenance expenditures, and (4) any other costs to be paid by the District under this

contract. This budget shall be considered by the Secretary to the end that the District shall have on or before July 1 of the first year after the effective date of this contract and on or before July 1 of each year thereafter an adequate annual operating budget for the succeeding year: Provided, That if the Secretary has failed to notify the District on or before July 1 of his approval of the budget the District shall then proceed with the assessment and levy on the basis of the budget presented to the Secretary.

e. The Board of Directors of the District shall make the assessment herein provided for to meet the obligations of the District hereunder from year to year during the term of this contract in accordance with the method and terms as provided by this contract and pursuant to the provisions of Section 61.0904, South Dakota Code of 1939 (Section 1, Chapter 154, Session Laws of South Dakota, 1927) or as such law may hereafter be amended. No apportionments of benefits by the District Assessor shall be necessary.

Charges To Be Assessed In Accordance With Land Classification

11. All District assessments for operation and maintenance, construction, charges, tolls or other charges against individual tracts of land in the District for the purpose of paying the District's obligation to the United States described herein and all other lawful obligations incurred by the District shall be based on the classification of each tract approved by the District Board of Directors on December 27, 1948, and approved by the Secretary upon execution of this contract. A copy of said land classification, filed in triplicate original, one with the Commissioner, one with the Regional Director, Region 6, and one with the Board of Directors of the District, by reference is made a part hereof. All assessments, tolls, or other charges against individual tracts in the District for the purpose of paying the District's obligation shall be fixed for the different classes of land at such ratios as may be

determined by the District's Board of Directors: Provided, That all assessments shall be within the percentage ratios as follows, all ratios being based on a ratio of 100 for class 1 land:

Class 1 – 100
Class 2 – 88-92
Class 3 – 60-65
Class 4 – 40-50

State, County and District Lands

12. a. State School lands not under contract of purchase and lands to which the District and /or the County has acquired title by tax sale proceedings for the non-payment of irrigation district and/or tax assessments, while not under contract of purchase will not be assessed by the District. However, when any of these lands are rented, such lands may obtain water, if and when available, by payment in advance of a water rental charge equal to the total annual assessment levied against assessable land of a similar land classification and payment in advance as to such land as is classified as non-pay land of a water rental charge as shall be prescribed by the Secretary: Provided, That no water may be delivered to land classified as non-pay land without prior approval of the Secretary. All moneys collected by the District for water service under this Article shall be used to meet any District obligation.

f. State School lands heretofore or hereafter under contract of purchase (as permitted by Section 15.0311, South Dakota Code of 1939) will, however, be assessed by the District, the assessment to be a lien upon the interest of such purchaser but not upon the interest of such vendor.

Water Service to Non-Assessable Lands

13. The District may furnish water, if and when available, to privately-owned land within the District not subject to assessment, subject to approval by the Secretary. The water rental service hereby provided

shall be at such rate as shall be prescribed by the Secretary. All moneys collected by the District for water service under this Article shall be used to meet any District obligation.

District to Receive Water

14. Subject to the terms of this contract, the District shall be entitled to receive the district water supply for each irrigation season during which this contract is in effect.

Assessment of Johnson Lateral and Inlet Canal Lands

15. In levying assessments to meet its obligations to the united States under the terms of this contract the Board of Directors of the District may assess the District lands furnished water from the Johnson Lateral and Inlet canal portions of the district irrigation works on the same basis as general class three (3) lands of the District, or otherwise as they deem appropriate, notwithstanding the specific classification of any such lands under the adjusted 1947 land classification: Provided, That whenever water is available for said lands on the same basis as all other District lands they shall be assessed on the same basis as all other District lands.

District Permitted to Make Minor Changes in Land Classification

16. In connection with their duties as a Board of Equalization, as provided by State law, the District Board of Directors shall be permitted to make minor changes within the paying classes, in the classification of project lands in order to correct serious inequalities that may become evident in future years. Such changes are to be approved by the Secretary before they become effective. The District's annual installments due to the United States are not to be effected by any such changes.

Penalty For Delinquent Payments

17. Every installment or charge required to be paid to the United States under this contract and which shall remain unpaid after it shall have become due and payable shall be subject to a penalty of one-half of one percent per month from the date of delinquency. The District shall impose on delinquencies in the payments of assessments, or other charges levied by the District to meet its obligations under this contract, such penalties as it is authorized to impose under the laws of the State of South Dakota.

Notice of Costs and Payment by District

18. a. The annual construction charge obligation shall be paid by the district as provided for in Article 6. No notice of the amount or due date of each semi-annual installment need be given the District by the Secretary: Provided, however, That should the District elect to make payment of the construction charge obligation under the variable formula plan as provided by Article 7, written notice of the amount of each semi-annual installment becoming due thereafter shall be given the District by the Secretary at least thirty (30) days prior to the due date of such semi-annual installment.

b. Whenever it becomes necessary under this contract for the Untied States to take over the operation and maintenance of any part of the district irrigation works, the Secretary shall give the District immediately:

(1) An operation and maintenance charge notice of the estimated amount of such charge to cover the period from the date of take-over to the end of that calendar year, and

(2) An operation and maintenance charge notice of the estimated amount of such charge to cover the following calendar year, where the taking-over occurs after May 1 of any calendar year. Thereafter the Secretary shall on or before May 1 of each year, during those years thoughout the term of this contract that the United States shall operate and maintain the

District irrigation works, give notice in writing to the District of the estimated operation and maintenance charges for the succeeding calendar year. On or before the 30th day of November following such notice the District shall advance to the Untied States one-half of such estimated cost of operation and maintenance and shall advance to the United States on or before the 15th day of May next following the balance of such estimated cost of operation and maintenance. If the actual cost for the year is less than the funds advanced therefore by the District, the excess may be credited against the next installment of charges coming due under this contract or may be credited to the District in the next succeeding notice of estimated operation and maintenance charges. Whenever in the opinion of the Secretary funds so advanced will be inadequate to operate and maintain the district irrigation works being operated by the Untied States, he may give a supplemental operation and maintenance charge notice at any time stating therein the amount of the additional funds required, and the District shall advance such additional amount on or before the date specified in the supplemental notice. Any excess remaining when the District shall have resumed the operation and maintenance of the district irrigation works shall be refunded to the District as soon as practicable.

g. On or before May 1 of each year the Secretary shall give written notice to the District of all costs (not included in (a) and (b) of this Article) incurred by the United States for administration, supervision, inspection, repairs, operation and maintenance, and any and all other costs incurred under the provisions of this contract, during the preceding year in connection with the district irrigation works. Payment of these costs shall be made by the District on or before the 31st day of December immediately following such notice, or as otherwise provided for by the Secretary in such notice: Provided, however, That whenever the District shall request a reclassification of lands within the District as by law provided the District shall pay to the United States the cost thereof

as estimated by the Secretary prior to the commencement of such reclassification work.

Rentals to be Credited

19. All revenues received by the Untied States from leasing of project grazing and farm lands and the sale or use of town sites, and which are, pursuant to the Federal Reclamation Laws, to be applied for the benefit of the water users, shall be determined annually by the Secretary and announced in writing to the District, and shall be credited each year as follows:

a. On the annual installment of project construction charges of the District until the entire construction indebtedness of the District has been paid.

b. Thereafter on the operation and maintenance charges, if any, as the same come due to the United States.

c. As the District may direct; but no distribution to individual water users shall be made out of such profits until obligations to the United States have been fully paid.

Defaults

20. All benefits to accrue to the District or to persons or lands in the District under the terms of this contract are conditioned upon payment to the Untied States of the charges provided in this contract, in accordance with the terms and conditions herein set out.

a. Should the District fail to levy the assessments, tolls or other charges against any tract of land in the District required to be levied to meet the District's obligations to the Untied States under this contract, or having levied, should the District be prevented from collecting such assessment, tolls or other charges by any judicial proceeding, or otherwise fail to collect them, no such tract of land shall be entitled to receive water.

b. No water shall be furnished to the District by

the United States or by the District through the district irrigation works or otherwise to or for the use of persons or lands therein during any period in which the District may be

(1) In arrears in the payment to the United States of any charge required to be paid under Article 18 of this contract;

(2) More than twelve months in arrears in the payment to the United States of any installment on its construction charge obligation required to be paid under Article 6(2) of this contract.

c. No water shall be furnished by the District, through the district irrigation works or otherwise, to any persons or lands therein which may be in arrears in the payment to the District of any assessments, tolls or other charges levied or established by the District for the purpose of raising revenues to meet the payment by the District to the United States of any of the District's obligations under this contract.

d. No waiver at any time by the United States of its rights with respect to default or any other matter arising in connection with this contract shall be deemed to be a waiver with respect to any subsequent default or matter. All rights of action for breach of this contract are reserved to the United States as provided in Section 3737 of the Revised Statutes of the Untied States as amended (41 U.S.C. 15).

Agreed Charges A General Obligation of the District

21. The District, as a whole is obligated to pay to the United States the charges becoming due as provided in this contract, notwithstanding the individual default in the payment to the District by individual water users of assessments, water rentals, or other charges levied by the District. The District will cause to be levied and collected all necessary assessments, water rentals, and other charges; and will use all of the authority and resources of the District to meet the obligations of the District, to make in full all payments to be made pursuant to this

contract on or before the date such payments become due, and to meet the other obligations under this contract.

Application of Payments

22. The United States may, at its option exercised by the Secretary, apply any payment or part thereof by the District to the United States to any charges then due and payable by the District to the United States under the provisions of this contract.

Consent by the Secretary to Compromising Delinquent Assessments

23. The United States hereby consents to the compromise, or abatement of assessments levied by the District prior to the effective date of this contract to meet its contract obligations to the United States in cases where the Board of Directors of the District determines that such assessments are delinquent to such an extent that the enforcement of the payment thereof through tax title proceedings is impracticable and further determines that it is to the benefit of the District to compromise or abate any part or all of such delinquent assessment: Provided, That such compromise or abatement of such delinquent assessments shall not be considered as releasing the District from its obligations under the provisions of this contract. The District agrees to furnish the United States, for its files, within 90 days after the effective date of this contract, a detailed statement, properly certified, and in form satisfactory to the Secretary, of all delinquent assessments and thereafter on or before the 15th day of November of each year a like statement which shall show the action taken by the board of Directors of the District on each delinquent assessment.

Subsequent to the effective date of this contract, delivery of water to any land shall be conditioned upon payment in full of all delinquent assessments or an agreement in writing for such payments over a period of years as may be agreed upon by the District Board.

Where payments are deferred over a period of years the delivery of water shall be conditioned upon the advance payment by the water user of the amount due each year as agreed upon. This provision shall not be construed as authorizing the delivery of water after the effective date of this contract without advance payment of the current assessment.

All sums realized from collection of assessments delinquent as of the effective date of this contract shall be deposited in the Reserve Fund of the District as provided for in Article 9 of this contract.

The District shall not compromise, abate or reallocate assessment levied after the effective date of this contract and thereafter becoming delinquent without the prior written consent of the Secretary and after such consent is obtained no compromise, abatement, or reallocation of any delinquent assessment shall be final until approved by the Secretary.

No compromise, abatement, or reallocation shall be made except as provided by State law and the provisions of this contract.

District to Keep Books and Records and Report Crop and other Data

23. To such extent, and in such manner and form as may be prescribed by the Secretary, the District shall establish and maintain account and other books and records and furnish to the Secretary reports and statements as to information contained therein pertaining to (a) accounts and financial transactions of the District, (b) crops raised and agricultural or livestock products produced on the lands within the District, and (c) irrigation water supply and the disposition thereof, a report thereon to be furnished to the Secretary annually on or before December 31, or such date or dates as may be fixed by the Secretary.

Access to Books and Records

24. Each party shall have the right, during office hours, to inspect and to make copies of the other party's books and official records relating to matters covered by this contract.

Selection of Manager

25. Until completion of payment to the United States of the construction charges against the lands of the District, there will be employed as project manager or superintendent a competent person who shall have had experience in the operation of similar irrigation works. Beginning with the effective date of this contract, such project manager or superintendent will be employed by the Secretary with all expense of his employment to be paid out of funds to be advanced by the District. When the Secretary deems it advisable and in the best interest of the Untied States he shall notify the District in writing not later than October 1 of any calendar year that the services of the Bureau-employed superintendent shall be discontinued on the 31st day of December following such notice. Thereafter the District shall employ a project manager or superintendent. The selection of said person by the District shall be subject to the approval of the Secretary, and upon notice from the Secretary that said project manager or superintendent is or has become unsatisfactory, the District shall promptly and as often as such notice is given, terminate the employment of such unsatisfactory employee and employ one acceptable to the Secretary.

Excess Lands

26. The District will not deliver water to irrigable lands held by any one person in excess of 160 acres, but will assess such excess lands in the same manner and to the same extent as irrigable lands of the project to which water is furnished are then being assessed. The District will cooperate and actively support the Secretary in bringing about compliance by

individual landowners with the excess land provisions of the Reclamation Laws.

District to Receive Benefits of Subsequent Legislation

27. In the event authorization is given by the Congress to make non-reimbursable allocations of a portion of project construction costs obligated to be repaid by the District hereunder, either through special legislation affecting this project or through general legislation hereinafter enacted, the Secretary shall notify the District of his determinations with respect to such non-reimbursable allocations and the District's contract obligation shall be reduced in accordance with such notices.

Computation of Costs

28. The costs which make up the various charges to be paid by the District to the United States under this contract shall embrace all expenditures of whatsoever kind in relation to the function for which the charge is made, including, but without limitation by reason of this enumeration, the cost of surveys and investigations, labor, property, material and equipment, engineering, legal, superintendence, administration, overhead, general expense, inspections, special services, and damage claims of all kinds. The Secretary's determination as to what costs are properly chargeable under this contract and the amount and classification thereof shall be conclusive.

Rules and Regulations

29. There is reserved to the Secretary the right so far as the purport thereof may be consistent with the provisions of this contract and the Reclamation Laws, to make rules and regulations and to add to and modify them as may be deemed proper and necessary to carry out the Reclamation Laws and this contract, and to supply necessary details of its administration, and the District agrees to observe such rules and

regulations. To prevent the excessive and wasteful use of water by individual water users, the Secretary may hereunder require the District to make a special charge for water in excess of an amount per acre to be fixed by the Secretary, the amount of such charge to be approved by the Secretary.

Contract a Modification of Water Right Application

31. The confirmation of this contract by the court shall be construed as a modification of all outstanding water right applications between the United States and individual landowners of the District, in any respect where such water right applications are inconsistent with the terms hereof. Any use of water by the owner of land under water right application, when he would not be entitled to use water on account of his delinquency in payment of charges due the Untied States, if this contract were not in effect, any payment by an owner of land under water right application of charges at a less rate than would be applicable if this contract were not in effect, or the receipt by the owner of land under water right application of any benefit hereunder, not conferred by his water right application, is to be construed as such owner's acceptance of this contract in its entirety and as a modification of his water right application, where such application is inconsistent with the terms of this contract. The default in said confirmation suit of any owner, mortgagee or liener of irrigable land in the District subject to outstanding water right application, or his failure to make answer therein, shall be construed as his acceptance of this contract in modification of such water right application, so far as this is in conflict with the terms of such water right application.

No Liability for Drought, Etc.

32. On account of drought, inaccuracy of distribution, or other causes, there may occur at times during any year, a shortage in the district water

supply. In no event shall any liability accrue against the United States or any of its officers, agents, or employees for any damage, direct, or indirect, arising out of such shortage; nor shall any obligation provided for herein be reduced because of any such shortage or damage. In any year in which such shortage may occur, the District shall, upon request of the contracting officer, provide a plan of equitable distribution of the district water supply among the District lands.

Waste, Seepage, Spring and Percolating Waters

33. The United States claims all waste, seepage, spring and percolating waters arising within the District and proposes to use such waters for additional irrigation purposes at such time as further beneficial use of such water may be determined by the Secretary.

Assignment Limited – Successors and Assigns Obligated

34. The provisions of this contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this contract, or any part thereof or interest therein shall be valid until approved by the Secretary.

Changes in District Organization

35. While this contract is in effect, no change shall be made in the District, by inclusion or exclusion of lands, by proceedings to dissolve, or otherwise, except upon the Secretary's written consent thereto.

Keyhole Dam and Reservoir

36. Whenever the Secretary shall find that an additional water supply can be made available to the lands of the District, or any part thereof, from the Keyhole dam and reservoir appropriate consideration shall be given to the District water requirements for

irrigation purposes and the Secretary shall determine to what extent the terms of this contract shall be modified as a basis for obtaining an additional water supply.

Contingent upon Appropriations or Allotment of Funds

37. The expenditure of any money or the performance of any work by the United States, herein provided for, which may require appropriations of money by Congress or the allotment of funds, shall be contingent on such appropriations or allotments being made. The failure of Congress to appropriate funds or the failure of any allotment of funds shall not, however, relieve the District from any obligations theretofore accrued under this contract, nor give the District the right to terminate this contract as to any of its executory features. No liability shall accrue against the Untied States in case such funds are not appropriated or allotted.

Discrimination against Employees or Applicants for Employment Prohibited

38. The District shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin, and shall require identical provision to be included in contracts relating to the performance of this contract. This provision, however, does not refer to, extend to, or cover the activities of the District which are not related to or involved in the performance of this contract..

Officials Not to Benefit

39. No Member of or Delegate to congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

Contract of 1928 Modified

40. This contract shall supersede the contract between the United States and the District dated July 16, 1923, and all amendments thereto except insofar as it may be necessary to use said contract as heretofore amended to determine the rights of any party which rights may have become vested thereunder but which have not been modified or annulled by the adoption of this contract, it being the intention to restate and reincorporate in this contract all provisions of the preceding contract which have not been modified herein or by operation of law.

Confirmation of Contract

41. The execution of this contract shall be authorized by a vote of qualified electors of the District as provided by law. Thereafter, without delay, the District shall prosecute a proceeding in court for a judicial confirmation of (1) the regularity of the steps leading up to the making of this contract, and (2) the validity of the contract so far as the District and the District landowners are concerned. The District shall furnish the United States for its files, certified copies of all proceedings relating to the authorization of this contract.

IN WITNESS WHEREOF, the parties hereto have signed their names the day and year first above written.

UNITED STATES OF AMERICA
By "s/ William E. Warre"
Title Assistant Secretary
BELLE FOURCHE IRRIGATION DISTRICT
(SEAL) By "s/ Oliver G. Rose"
ATTEST:
"s/ Vern Hafner" (SEAL) Title President
(Secretary)

EXHIBIT 5
Supplement No. 2, Contract No. 11r-1555
Amendment No. 1, Contract No. 14-06-600-6979

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Belle Fourche Irrigation Project, South Dakota

AMENDATORY CONTRACT BETWEEN THE UNITED STATES OF AMERICA AND THE BELLE FOURCHE IRRIGATION DISTRICT, SOUTH DAKOTA

THIS THIRD AMENDATORY CONTRACT, Made this 16th day of March, 1971, between the UNITED STATES OF AMERICA (hereinafter called the United States), acting through the Secretary of the Interior (hereinafter called the Secretary), and pursuant to the Federal Reclamation Laws, and the BELLE FOURCHE IRRIGATION DISTRICT (hereinafter called the District), an irrigation district organized and existing under and by virtue of the laws of the State of South Dakota, with its principal place of business and office at Newell, South Dakota:

W I T N E S S E T H:

WHERAS, the following preliminary statements are made in explanation;

a. The United States and the District entered into an amendatory repayment contract (Ilr-1555) on November 29, 1949, which covered the District's repayment to the United States of the costs of constructing irrigation works for the District's lands and other purposes. The second amendatory contract (14-06-600-6979) dated January 2, 1963, was entered into for the primary purposes of contracting for an additional water supply from the Keyhole Dam and Reservoir.

b. Article II of the amendatory repayment contract of November 29, 1949, and Article 8 of the second amendatory contract of January 1, 1963,

provided the following percentage ratios by land classes upon which the District would levy assessments, tolls, and all other charges; including Operation and Maintenance Charges:

Class 1 --- 100
Class 2 --- 88-92
Class 3 --- 60-65
Class 4 --- 40-50

c. It is mutually agreed among the contracting parties that the assessment methods and percentages mentioned in b. above should be amended and superseded.

NOW, THEREFORE, in consideration of the mutual promises herein set forth, it is agreed as follows:

1. Article II of Amendatory Contract Ilr-1555, dated November 29, 1949, and Article 8 of second amendatory contract 14-06-600-6979, dated January 2, 1963, are hereby amended:

LEVY OF ASSESSMENTS, TOLLS, AND CHARGES

a. The District shall cause to be levied and collected all necessary assessments, tolls, and other charges, and will use all of the authority and resources of the District to meet the obligations of the District to make in full all payments to be made pursuant to these contracts on or before the date such payments become due and to meet its other obligations under these contracts.

b. The assessments to pay annual operation, maintenance, and replacement costs and assessments for any and all special or reserve funds shall be assessed equally against all irrigable acres irrespective of land classification. All assessments, tolls, or other charges against individual tracts of land in the District for the purpose of paying annual construction installments due under all contracts shall be fixed for the different classes of land at such ratios as may be determined by the District Board of Directors: Provided, That all assessments shall be within the percentage ratios as follows, with all ratios being based on a ratio of 100 for Class 1 lands:

Class 1 --- 100
Class 2 --- 65-80
Class 3 --- 10-25
Class 4 --- 1-10

REPAYMENT CONTRACTS REMAIN IN EFFECT

2. Except as herein expressly modified, all provisions of contracts Ilr-1555, dated November 29, 1949, and second amendatory contract 14-06-600-6979, dated January 2, 1963, shall remain in full force and effect.

EQUAL OPPORTUNITY

3. During the performance of this contract, the District in this article referred to as the Contractor, agrees as follows:

a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising;, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this Equal Opportunity clause.

b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

c. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency

Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

e. The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

f. In the event of the Contractor's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the Contract may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

g. The Contractor will include the provisions of paragraphs a. through g. in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a

result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

COVENANT AGAINST CONTIGENT FEES

4. The District warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the District for the purpose of securing business. For breach or violation of this warranty the United States shall has the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

WATER POLLUTION CONTROL

5. The District agrees that it will comply fully with all applicable Federal laws, orders, and regulations, and the laws of the State of South Dakota, all as administered by appropriate authorities, concerning the pollution of streams, reservoirs, groundwater, or water courses with respect to thermal pollution or the discharge of refuse, garbage, sewage effluent, industrial waste, oil, mine tailings, mineral salts, or other pollutants. The District further agrees that any contract it may enter into with a third party for the furnishing of project water will contain a similar water pollution control article.

QUALITY OF WATER

6. The operation and maintenance of project facilities and the construction of new project facilities for the provisions of project water under this contract shall be performed in such manner as is practicable to maintain the quality of raw water to be furnished hereunder. The United States is under no obligation to

construct or furnish water treatment facilities to maintain or to better the quality of water except to the extent such facilities are expressly referred to elsewhere in this contract as part of the project facilities to be constructed by the United States pursuant to reclamation law or as otherwise required by law. Further, the United States does not warrant the quality of water to be furnished pursuant to this contract.

WATER AND CROP REPORTS

7. The District shall report to the Contracting Officer on or before December 31 of each year the quantities of water taken under the terms of this contract. On the same date the District will report the crops raised and agricultural or livestock products produced on the lands irrigated.

OFFICIALS NOT TO BENEFIT

8. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with corporation or company for its general benefit.

IN WITNESS WHEREOF, the parties hereto have signed their names the day and year first above written.

UNITED STATES OF AMERICA

Appd. Sol. Off. By "s/ Martin H. Oleson Jr."
Date 3-17-71 Acting Regional Director, Region 6
ATTEST: "s/ Bielefeld"
Field Scl. BELLE FOURCHE IRRIGATION DISTRICT

(Seal)

"s/Alice D. Helmer" By "s/ Darrell M. Williamson"
Sec, Board of Directors President Board of Directors

BELLE FOURCHE IRRIGATION DISTRICT

Newell, South Dakota

RESOLUTION

I hereby certify that the following is a part of the minutes of the Regular Meeting of the Board of Directors of the Belle Fourche Irrigation District held at Newell, South Dakota on March 2nd, 1971:

***"Third Amendatory Contract between the United States of America and the Belle Fourche Irrigation District amending and superseding Article II of the Amendatory repayment contract of November 29, 1949, (Ilr-1555) and second amendatory contract of January 2, 1963, (14-06-600-6979), was reviewed and discussed by the Board of Directors of the Belle Fourche Irrigation District. Motion was made by Virgil Terrill, seconded by William Keiry, to approve amendment to contract. President requested a roll call vote with all directors voting yes. With motion unanimously approved by the Board, President was instructed to affix his signature to the contract and Secretary was instructed to attest his signature and to affix the seal of the Belle Fourche Irrigation District to the contract."

Dated at Newell, Butte County, South Dakota this 2nd day of March, 1971.

"s/ Alice D. Helmer"
Alice D. Helmer, Secretary
Belle Fourche Irrigation District

SEAL

EXHIBIT 6

Contract No. 5-07-60-WR170

UNITED STATES DEPARTMENT OF THE INTERIOR BUREAU OF RECLAMATION

Pick-Sloan Missouri Basin Program
Belle Fourche Unit, South Dakota

REPAYMENT CONTRACT BETWEEN THE UNITED STATES AND BELLE FOURCHE IRRIGATION DISTRICT

Article No.	Title	Page No.
Preamble		1
Explanatory Recitals		1-2
Term of Contract		2
Description of Work Program		2
Prior Contracts		2-3
Annual Construction Charges		3
General Obligation		3-4
Miscellaneous and Water Service Revenues		4
Operation and Maintenance of Transferred Works Payment of Miscellaneous Costs		4-5
Reviews and Inspections		5-6
Reserve Fund		6
Operation and Maintenance Assessments		7
Title to Project Facilities		7
Water Supply Entitlement - Shortages		7
Confirmation of Contract		7
Other Contract Provisions		8
Notices		8
Contracting Officer		9
Signature Page		9
Exhibit A - Other Contract Provisions		
Exhibit B - Contract No. 14-06-600-6979		

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Pick-Sloan Missouri Basin Program
Belle Fourche Unit, South Dakota

REPAYMENT CONTRACT BETWEEN THE UNITED STATES AND BELLE FOURCHE IRRIGATION DISTRICT

THIS CONTRACT, Made this 10th day of October, 1984, pursuant to the Reclamation Act of 1902 (32 Stat. 388) and acts amendatory thereof and supplementary thereto, particularly the Act of November 17, 1983 (97 Stat. 989), between the UNITED STATES OF AMERICA, hereinafter called the United States, represented by the officer executing this contract, and the BELLE FOURCHE IRRIGATION DISTRICT, with its principal place of business at Newell, South Dakota, hereinafter called District or Contractor.

W I T N E S S E T H:

WHEREAS, the following statements are made for the purpose of background information:

a. Belle Fourche Irrigation Project was one of the first Reclamation projects authorized and constructed under the Reclamation Act of 1902. The project was authorized in 1904 and construction was accomplished in the 1905 to 1914 period.

b. The Belle Fourche Irrigation District was organized in 1923, in which year a contract for repayment of construction and operation and maintenance was signed with the United States. The District replaced the Belle Fourche Water Users Association, the first organized entity to represent the irrigators through contracts with the United States. The Bureau of Reclamation operated the project until 1949.

c. The United States and the District entered an amendatory contract (No. Ilr-1555) on November 29, 1949. This contract provided for an adjusted repayment obligation and transferred operation and

maintenance of the irrigation system to the District. A second amendatory contract (No. 14-06-600-6979) was entered on January 2, 1963, to provide the District a supplemental water supply from Keyhole Reservoir in Wyoming. The supplemental contract (No. 14-06-600-1949A) of March 25, 1976, obligated the District to repay an additional $4,000 per year as a result of operation and maintenance cost savings resulting from modifications to Belle Fourche Dam.

d. The Act of November 17, 1983 (Public Law 98-157), reauthorizes the Belle Fourche Project as the Belle Fourche Unit of the Pick-Sloan Missouri Basin Program. The Act authorizes construction appropriations for rehabilitation and betterment of the irrigation facilities and recreation and fish and wildlife measures, beginning October 1, 1984, the sum of $42 million (based on January 1981 prices).

e. The United States and the District concur that rehabilitation and betterment of the irrigation facilities will be accomplished substantially in accordance with the plan contained in the report entitled. Report on Proposed Rehabilitation and Betterment Program, Belle Fourche Project, South Dakota, dated January 1981.

f. Public Law 98-157 authorizes the Secretary of the Interior to negotiate and execute an amendatory repayment contract with the District, Bureau of Reclamation officials, through delegation of authority, represent the Secretary in the negotiation, execution, and administration of this contract.

NOW , THEREFORE, in consideration of the premises and the mutual promises of the parties, it is agreed as follows:

TERM OF CONTRACT

1. This contract shall be effective on execution and shall continue for a term of 40 years: Provided, That following expiration of this contract, the parties shall enter appropriate agreements to cover continued operation and maintenance of Belle Fourche Unit project facilities by the District.

DESCRIPTION OF WORK PROGRAM

2. a. The United States proposes to expend for the rehabilitation and betterment of project works and recreation and fish and wildlife conservation and development for Belle Fourche Unit as authorized by Public Law 98-157, the sum of $42 million (based on January 1981 prices), plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction cost indexes applicable to the types of construction involved. The United States and the District may agree and arrange for the District's performance of any of the work contemplated by entering appropriate work performance agreements pursuant to the Drainage and Minor Construction Act of June 13, 1956 (70 Stat. 274).

b. The United States shall develop and implement an annual rehabilitation and betterment work program within the capability of the funds provided through appropriations. The United States shall keep the District fully informed on the proposed work program and the District shall keep the District fully informed on the proposed work program and the District shall cooperate in every way possible such as scheduling water deliveries to accommodate the annual work program.

c. Recreation and fish and wildlife enhancement will be undertaken only after a cost-sharing and management agreement has been entered between the United States and an eligible State or local entity under the provisions of the Federal Water Project Recreation Act (79 Stat. 213), as amended.

PRIOR CONTRACTS

3. This contract shall replace in entirety the two existing contracts between the Unied States and the District covering repayment of costs of Belle Fourche Unit, Contract Nos. Ilr-1555 and 14-06-600-1949A. Contract no. 14-06-600-6979 covering water entitlements and payments for Keyhole Unit shall remain in effect. Contract No. 14-06-600-6979 is attached as Exhibit B and by reference is made a part of this contract.

ANNUAL CONSTRUCTION CHARGES

4. a. Annual construction charges (payments) shall be paid by the District to the United States beginning in the year this contract is executed and shall continue throughout the contract term. Annual charges during the period required to complete the rehabilitation and betterment program shall continue at the rate prescribed in the two prior contracts being replaced, a cumulative total of $42,700. Following completion of the rehabilitation and betterment program, the annual charges shall increase to $ 277,700 until the District's construction repayment obligation under the Keyhole Unit contract (No. 14-06-600-6979) is repaid, at which time the annual charges shall increase to $279,200. For the purpose of this contract, the program shall be considered complete in the year the Contracting Officer notifies the District in writing that all authorized appropriations for the rehabilitation and betterment of the irrigation facilities have been expended. Following such notification, the final construction repayment obligation of the District under this contract will be computed by the Contracting Officer. Based on an estimated construction period of 8 years, the construction repayment obligation is estimated to be $9,261,000.

b. The first annual payment by the District shall be due and payable on or before the June 30 next succeeding the effective date of this contract. The succeeding 39 annual payments by the District shall be due and payable on June 30 of each of the succeeding 39 years.

c. The United States may require that payments by the District under this contract shall be made through the Treasury Financial Communications System (TFCS) if such TFCS is locally available and accessible through the District's banking or financial institution. The Contracting Officer shall provide instructions for use of the TFCS to the District and the District's banking or financial institution.

GENERAL OBLIGATION

5. a. The obligation of the District to pay annual construction charges to the United States as provided in this contract is a general obligation of the District as a whole notwithstanding the manner in which the District may distribute the obligation among the District's landowners or water users and notwithstanding the default of individual landowners or water users in their obligations to the District.

b. The payment of annual construction charges becoming due hereunder is a condition precedent to the District receiving benefits under this contract. No water will be made available to the District through project facilities during any period in which the District may be in arrears for more than 12 months in the payment of any construction charges due the United States. The District shall not furnish water made available pursuant to this contract for landowners or water users which are in arrears in the payment of construction charges levied or established by the District.

MISCELLANEOUS AND WATER SERVICE REVENUES

6. a. All miscellaneous net revenues, such as those obtained for grazing and farming leases for Belle Fourche Unit lands owned by the United States, shall accrue to the United States and be applied for repayment of costs of the Belle Fourche Unit allocated to irrigation but not assigned to be repaid through annual construction charges paid by the District. Net revenues shall be defined for this purpose as gross revenues less administration, operation, and maintenance costs of the United States or the District associated with managing such leases as provided for by separate agreement between the United States and the District.

b. Water delivered by the District for purposes other than irrigation or for irrigation of nonassessable lands shall be allowed only after approval by the Contracting Officer of the charges for and conditions of delivery. The net proceeds from any such water

delivery shall accrue to the United States and be applied to repayment of irrigation costs of the Belle Fourche Unit not assigned to be repaid by the District. Net proceeds shall be exclusive of operation and maintenance expenses of the District.

OPERATION AND MAINTENANCE OF TRANSFERRED WORKS - PAYMENT OF MISCELLANEOUS COSTS

7. a. All Belle Fourche Unit project works including the irrigation canals, laterals, drains, and appurtenant structures; Belle Fourche Diversion Dam; and Belle Fourche Dam and Reservoir were transferred to the District for care, operation, and maintenance under the provisions of a prior contract (No. Ilr-1555) of November 29, 1949. Such project works shall hereinafter be referred to as transferred works.

b. The District, without expense to the United States, shall continue to care for, operate and maintain the transferred works in full compliance with the provisions of this contract, and in such manner that the transferred works will remain in sound operating condition.

c. Necessary repairs of the transferred works shall be made promptly by the District. Should the District fail to fulfill its obligations to care, operate, and maintain the transferred works, resulting in a treat to interruption of service or interruption of service, the Contracting Officer may issue to the District a special written notice of the necessary repairs. Within 60 days of receipt of such notice, the District shall either make the repairs or submit an acceptable plan for accomplishing the work. If the District fails to meet the conditions stated above, the Contracting Officer may cause the repairs to be made and the cost thereof shall be paid by the District as directed by the Contracting Officer.

d. In the event the District is found to be operating the transferred works or any part thereof in violation of this contract, then, upon the election of the Contracting Officer, the United States may take over from the District the care, operation, and maintenance

of the transferred works by giving written notice to the District of such election and the effective date thereof. Thereafter, during the period of operation by the United States, upon notification, the District shall pay to the United States, annually in advance, the cost of operation and maintenance of the works as determined by the Contracting Officer. Following written notification from the Contracting Officer, the care, operation, and maintenance of the works may be retransferred to the District.

e. No substantial change shall be made or encroachment allowed by the District to any of the major transferred works or an rights-of-way for such works, without first obtaining the written consent of the Contracting Officer.

f. The District shall hold the United States, its officers, agents, and employees harmless for any and all damages which may, in any manner, result from the care, operation and maintenance of any of the project works transferred to the District.

g. The District shall cooperate with the Contracting Officer in implementing an effective safety of dam(s) program. The United States agrees to provide the District and the appropriate agency of the State of South Dakota with design data, designs, and an operating plan for the dam(s) and related facilities consistent with the current memorandum of understanding concerning storage dam plan-design-construct-operate-maintain process between the United States and the State of South Dakota

h. In addition to all other payments to be made b y the District under this contract, the District shall, during the period of time any portion or all of the project works are being operated, pay the United States, following the receipt of a detailed statement, miscellaneous costs incurred by the United States for any work requested or caused by the District involving the administration and supervision of this contract.

i. The District shall, as part of its operation and maintenance responsibilities hereunder, employ a competent person as manager of the district. In the selection of such person, the District shall consider

experience in the operation and maintenance of similar irrigation projects as a criterion for employment. Selection of said manager by the District shall be subject to approval by the Contracting Officer.

REVIEWS AND INSPECTIONS

8. a. The United States and the District jointly shall schedule and make periodic reviews and inspections of the transferred works with the objective of assisting the District in determining the condition of such works and the adequacy of the maintenance and safety of dams programs. The United States will prepare a report of the review or inspection, including recommendations, if any, and copies will be furnished to the District. The District will pay the United States for its actual costs of such periodic reviews and inspections within 30 days of receipt of a bill for collection: Provided, That the United States shall give the District advance notice of the estimated cost of the periodic reviews and inspections prior to performance.

b. If requested by the District, special inspections of transferred works may be made by the United States to determine remedial measures required to solve specific operation and maintenance related problems. Any special inspections shall, except in the case of an emergency, be made only after receiving a written request from the District. The District will pay the United States for its actual costs of such special inspections within 30 days of receipt of a bill for collection.

c. The State of South Dakota may be provided an opportunity to observe and participate in reviews and inspections at its own expense. Copies of reports and recommendations may be provided to the State.

RESERVE FUND

9. a. Commencing with execution of this contract, the District shall accumulate and maintain a reserve fund that will be available to cover extraordinary operation and maintenance costs for repairs, replacements, and safety of dams items. Such

reserve fund shall be accumulated by the District with annual deposits or investments of not less than $15,000 to a federally insured interest-bearing or dividend-bearing account, or in securities guaranteed by the Federal Government: Provided, That the funds must have the liquidity to meet the expenses for which the reserve fund was intended. Annual deposits and accumulation of interest or dividends to the reserve fund shall continue until the amount accumulated is $150,000. Thereafter, the annual deposits may be discontinued and the interest or dividend earnings shall continue to accumulate and be retained in this reserve fund or other reserve funds that may be mutually established. Upon mutual agreement of the parties, the amount of the reserve fund and the annual deposits may be adjusted to reflect adequacy of the reserve fund in meeting potential future uses.

b. Expenditures shall be made from this reserve fund only for meeting extraordinary costs of operation and maintenance for purposes for which the fund was established. Expenditures from the fund by the District shall have the prior approval of the Contracting Officer. Whenever the reserve fund is reduced below the amount mutually established by the parties, the District shall make annual deposits as specified above to restore the reserve fund to the agreed upon accumulated amount.

c. During any period in which any of the project facilities are operated and maintained by the United States, the reserve fund shall be available for like use by the United States.

d. The District shall annually provide a statement to the Contracting Officer showing the balance of the reserve fund.

OPERATION AND MAINTENANCE ASSESSMENTS

10. Each year during the term of this contract the District shall levy an assessment against the assessable lands within the District sufficient to yield an amount to carry out its operation and maintenance responsibilities during the ensuing year plus that amount required for deposits to reserve

fund(s). The annual operation and maintenance assessment and any previous delinquent assessments and penalties applicable to each tract of land eligible to receive water from the District shall be collected in advance of delivery of water.

TITLE TO PROJECT FACILITIES

11. Title to project facilities of the Belle Fourche Unit shall be and remain in the name of the United States until the construction charge obligation of the District as prescribed in this contract has been fully discharged and until otherwise approved by the Congress, notwithstanding that such facilities are transferred to the District for care, operation, and maintenance.

WATER SUPPLY ENTITLEMENT - SHORTAGES

12. a. Subject to the provisions of this contract, the District shall be entitled to receive its water supply from Belle Fourche Unit project facilities for each irrigation season during which this contract is in effect. The amount of water to be furnished by the District to eligible lands shall be that quantity which may be applied beneficially in accordance with good irrigation water usage practices consistent with South Dakota water laws. The District shall establish norms for beneficial use within the District. The District may impose a surplus water charge on water users who use water in excess of the established norms. In the case of a water shortage, the District shall equitably proportion the available water to those lands eligible for service. No liability shall accrue against the United States or any of its officers, agents, or employees for any damage direct or indirect arising from any shortage in the District's water supply.

b. The United States claims all recoverable waste and return flows from the project for beneficial use on the project. The parties shall cooperate, as necessary, to protect such claims.

CONFIRMATION OF CONTRACT

13. The execution of this contract by appropriate officials of the District shall be authorized and ratified by the qualified electors of the Belle Fourche Irrigation District at an election held for that purpose as provided by South Dakota law. Thereafter, without delay, the District shall prosecute a proceeding in the proper court for a judicial confirmation of (a) the regularity of the steps leading up to the execution of this contract, and (b) the validity of the contract so far as the District and the landowners of the Belle Fourche Irrigation District are concerned. Prior to initiation of construction, the District shall furnish the United States, for its files, certified copies of the judicial confirmation documents relating to the authorization of this contract.

OTHER CONTRACT PROVISIONS

14. Other contract provisions applicable to this contract are listed below. The full text of these provisions is attached as Exhibit A which by referenced is made a part of this contract.

A. Charge for Late Payments
B. Contingent on Appropriation or Allotment of Funds
C. Officials Not to Benefit
D. Changes in Contractor's Organization
E. Assignment Limited--Successors and Assigns Obligated
F. Books, Records, and Reports
G. Rules, Regulations, and Determinations
H. Administration of Project Lands
I. Quality of Water
J. Water and Air Pollution Control
K. Water Conservation
L. Title VI, Civil Rights Act of 1964
M. Equal Opportunity (Federal Construction)
N. Certification of Nonsegregated Facilities
O. Affirmative Action Clause for Handicapped Workers

NOTICES

15. Any notice, demand, or request authorized or required by this contract shall be deemed to have been given, on behalf of the District, when mailed, postage prepaid, or delivered to the Regional Director, Upper Missouri Region, Bureau of Reclamation, P.O. Box 2553, Billings, Montana 59103, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Secretary-Treasurer, Belle Fourche Irrigation District, P.O. Box 225, Newell, South Dakota 57760. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

CONTRACTING OFFICER

16. The Regional Director, Upper Missouri Region, Bureau of Reclamation, or his/her designated representative, shall be the Contracting Officer for the United States for the purpose of administration of this contract.

IN WITNESS WHEREOF, the parties hereto have executed this contract as of the day and year first-above written.

UNITED STATES OF AMERICA

(SEAL)By /s/Robert A. Olson
Acting Commissioner
Bureau of Reclamation

ATTEST: BELLE FOURCHE IRRIGAITON DISTRICT

By /s/Alice D. Helmer
Secretary-Treasurer

By /s/Robert L.Donaldson
President, Board of Directors

EXHIBIT A

A. CHARGE FOR LATE PAYMENTS

The contractor shall pay a late payment charge on installments or charges which are received after the due date. The late payment charge percentage rate calculated by the Department of the Treasury and published quarterly in the Federal Register shall be used: Provided. That the late payment charge percentage rate will not be less than 0.5 percent per month. The late payment charge percentage rate applied on an overdue payment will remain in effect until payment is received. The late payment rate will be determined on the day immediately following the due date and will be applied to the overdue payment for the period of delinquency. In addition, debts more than 60 days past due may be subject to an administrative charge. In the case of late partial payments, the amount received will first be applied to the late payment charge and any remaining balance to the overdue payment.

B. CONTINGENT ON APPROPIATION OR ALLOTMENT OF FUNDS

The expenditure or advance of any money or the performance of any work by the United States shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations under this contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

C. OFFICALS NOT TO BENEFIT

No member of or Delegate to Congress, Resident Commissioner or official of the Contractor shall benefit from this contract other than as a water user or landowner in the same manner as other water users or landowners.

D. CHANGES IN CONTRACTOR'S ORGANIZATION

While this contract is in effect, no change shall be made in the Contractor's organization, by inclusion or

exclusion of lands, by dissolution, consolidation, merger or otherwise, except upon the Contracting Officer's written consent.

E. ASSIGNMENT LIMITED - SUCCESSORS AND ASSIGNS OBLIGATED

The provisions of this contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this contract or any part or interest therein shall be valid until approved by the Contracting Officer.

F. BOOKS, RECORDS, AND REPORTS

The Contractor shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this contract including the Contractor's financial transactions, water supply data, project operation, maintenance and replacement logs, and project land and right-of-way use agreements; the water users' land-use (crop census), land-ownership, land-leasing and water-use data; and other matters that the Contracting Officer may require. Reports thereon shall be furnished to the Contracting Officer in such form and on such date or dates as may be required. Subject to applicable Federal laws and regulations, each party shall have the right during office hours to examine and make copies of each other's books and records relating to matters covered by the contract.

G. RULES, REGULATIONS, AND DETERMINATIONS

1. The parties agree that the delivery of water or the use of Federal facilities pursuant to this contract is subject to Reclamation law, as amended and supplemented, including, but not limited to, the Reclamation Reform Act of 1982 (Public Law 97-293), and the rules and regulations promulgated by the Secretary of the Interior under Reclamation Law.

2. The Contracting Officer shall have the right to make determinations necessary to administer this contract

that are consistent with the expressed and implied provisions of this contract, the laws of the United States and the State, and the rules and regulations promulgated by the Secretary of the Interior. Such determinations shall be made in consultation with the Contractor.

H. ADMINISTRATION OF PROJECT LANDS

The lands and rights-of-way acquired and needed by the United States for the purposes of care, operation, and maintenance of project works may be used by the Contractor for such purposes. The Contractor shall ensure that no unauthorized encroachment occurs on project lands and rights-of-way. The Contractor shall not, except with prior written permission from the Contracting Officer, issue rights-of-way across project land, issue land rights to project lands, or issue leases, licenses, permits, or special use agreements involving project land, rights-of-way or transferred works. All such land use instruments shall only be issued by the Contracting Officer, unless prior written consent is provided by the Contracting Officer.

I. QUALITY OF WATER

The operation and maintenance of project facilities shall be performed in such manner as is practicable to maintain the quality of raw water made available through such facilities at the highest level reasonably attainable as determined by the Contracting Officer. The United States does not warrant the quality of water and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water.

J. WATER AND AIR POLLUTION CONTROL

The Contractor, in carrying out his contract, shall comply with all applicable water and air pollution laws and regulations of the United States and the State, and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

K. WATER CONSERVATION

The Contractor shall develop and implement an effective water conservation program for all uses of water which is provided from or conveyed through federally constructed or federally financed facilities. The water conservation program shall contain definite goals, appropriate economically feasible water conservation measure, time schedules for meeting water conservation objectives, and be acceptable to the Contracting Officer prior to the delivery of water. At subsequent (5-year) intervals, the Contractor shall submit a report on the results of the program to the Contracting Officer for review. Based on the conclusions of the review, the Contracting Officer and the Contractor shall consult and agree on revisions to, or continuation of the water conservation program.

L. TITLE VI. CIVIL RIGHTS ACT OF 1964

1. The Contractor agrees that it will comply with Title VI of the Civil Rights Act of July 2, 1964 (78 Stat. 241), and all requirements imposed by or pursuant to the Department of the Interior Regulation (43 CFR 17) issued pursuant to that title, to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Contractor receives financial assistance from the United States and hereby gives assurance that it will immediately take any measures to effectuate this agreement.

2. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Contractor by the United States, this assurance obligates the Contractor, or in the case of any transfer of such property, any transferee for the period during which the real property or structure is used for a purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance

obligates the Contractor for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates the Contractor for the period during which the Federal financial assistance is extended to it by the United States.

3. This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts, or other Federal financial assistance extended after the date hereof to the Contractor by the United States, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Contractor recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall reserve the right to seek judicial enforcement of this assurance. This assurance is binding on the Contractor, its successors, transferees, and assignees.

M. EQUAL OPPORTUNITY

(Federal Construction)

During the performance of this contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without discrimination because of race, color, religion, sex or national origin.

3. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the said labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

5. The Contractor will furnish all information and reports required by said amended Executive Order by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7. The Contractor will include the provisions of paragraphs 1, through 7, in every subcontract or

purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be binding upon each subcontractor or vendor. He Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

N. CERTIFICATION OF NONSEGREGATED FACILITIES

The Contractor hereby certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. It certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Contractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washroom, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. The Contractor further agrees that (except

where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause; that it will retain such certifications in its files; and that it will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES

A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding $10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually). Note: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

O. AFFIRMATIVE ACTION CLAUSE FOR HANDICAPPED WORKERS

The provisions of section 504 of the Rehabilitation Act of 1973 (Public Law 93-112). As amended , and as set forth for implementation in 41 CFR 60-741.4, to eliminate discrimination on the basis of handicap in any program activity receiving Federal financial assistance is a part of this contract and will be incorporated in all contracts or sub-contracts administered under the provisions of this contract, by the insertion of the following affirmative action clause;

AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS

1. The Contractor will not discriminate against any employee or applicant for employment because of

physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: Employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

2. The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor, issued pursuant to the Act.

3. In the event of the Contractor's noncompliance with the requirements of this clause, actions for non-compliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

4. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the Contracting Officer. Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.

5. The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

The Contractor will include the provisions of this clause in every subcontract or purchase order of $2,500 or more exempted by rules, regulations, or

to Section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs my direct to enforce such provisions, including action for noncompliance.

EXHIBIT B

Contract No. 14-06-600-6979
Approved as to form: 8-3-62

UNITED STATES DEPARTMENT OF THE INTERIOR BUREAU OF RECLAMATION

Belle Fourche Irrigation Project, South Dakota

SECOND AMENDATORY CONTRACT BETWEEN THE UNITED STATES OF AMERICA AND THE BELLE FOURCHE IRRIGATION DISTRICT, SOUTH DAKOTA

THIS SECOND AMENDATORY CONTRACT, Made this 2nd day of January, 1963, between the UNITED STATES OF AMERICA (HEREINAFTER CALLED THE United States), acting through the Secretary of the Interior (hereinafter called the Secretary), and pursuant to the Federal Reclamation Laws, and the BELLE FOURCHE IRRIGATION DISTRICT (HEREINAFTR CALLED THE District), an irrigation district organized and existing under and by virtue of the laws of the State of South Dakota, with its principal place of business and office at Newell, South Dakota;

W I T N E S S E T H :

WHEREAS, the following preliminary statements are made in explanation:

(a) The United States and the District entered into an amendatory repayment contract (Ilr-1555) on November 29, 1949, which covered the District for the District's lands and other purposes. Article 36 of this 1949 contract provided as follows:

"36. Whenever the Secretary shall find that an additional water supply can be made available to the lands of the District, or any part thereof, from the Keyhole dam and reservoir appropriate consideration shall be given to the District water requirements for irrigation purposes and the Secretary shall determine to what extent the terms of this contract shall be modified as a basis for obtaining an additional water supply."

(b) The United States and the District are agreed that an additional water supply can be made available to the District by assigning for the District's use a portion of the space of Keyhole reservoir, with the right of the District to store therein water which it is entitled to use under its project water right, to use so much of Keyhole storage water as shall be properly allocable to such space, and to purchase additional Keyhole water when available and needed by the District.

NOW, THEREFORE, in consideration of the mutual promises herein set forth, it is agreed as follows:

Definitions

1., Where used in this contract, the terms

(a) "Secretary" shall mean the Secretary of the United States Department of the Interior, or his duly authorized representative.

(b) "Federal Reclamation Laws" shall mean the Act of June 17, 1902 (32 Stat.383), and all acts amendatory thereof and supplementary thereto, including particularly, without limitation of the foregoing, the Reclamation Project Act of 1939 (53 Stat. 1187), as amended.

(c) "Irrigation Season" shall mean the period April 15th through November 30th within any year.

(d) "Year" shall mean period January 1 through the next following December 31.

(e) "Project Water" shall mean water which landowners of the District are entitled to use under South Dakota Notices of Appropriation Nos. 18874 and 18875, both dated August 5, 1905, and

respectively recorded at pages 12 and 13 of Book 17, Butte County records, South Dakota.

(f) "Keyhole Water" shall mean water which the United States is entitled to store in Keyhole reservoir and to dispose of under Wyoming Permit 5707 Res.

(g) "1949 repayment contract" shall mean the amendatory repayment contract (Ilr-1555) of November 29, 1949, between the United States and the District.

Storage and Use of Water

2.(a) The District shall have storage rights in Keyhole reservoir equal to 7.7 percent of the total active capacity of the reservoir. This percentage initially is equivalent to approximately 10,000 acre-feet of space.

(b) The District may use its Keyhole reservoir storage space to retain either project water or its 7.7 percent share of Keyhole water, or both; and such right to retain water shall include the right to hold over such water from prior years; but the total amount of water retained at any one time shall not exceed that which can be stored within
7.7 percent of the then total active capacity of Keyhole reservoir.

(c) The District shall each year be entitled to the use of 7.7 percent of Keyhole water coming into the Keyhole reservoir during that year. Such right to the use of 7.7 percent of Keyhole water for any one year shall include the right to store or to hold over all or any portion of said 7.7 percent share of Keyhole water in Keyhole reservoir within the limitations above set out in Article 2 (a) and (b).

(d) All space in Keyhole reservoir shall be operated with like priority as to storage rights; and the United States reserves the privilege of granting to others holdover rights as to any unsold space that are not inconsistent with the rights granted to the District under this contract. In determining the amount of stored water to which the District is entitled under this contract, losses incidental to storage will be prorated equally over all water in storage; and, in determining

the amount of stored water delivered, the point of measurement shall be the outlet works of Keyhole dam and reservoir. The District shall receive said stored water at the point of measurement and shall be wholly responsible for taking said water at that point and conveying, diverting, and utilizing it.

(e) While Keyhole dam and reservoir is being operated and maintained by the United States, it will operate the works to the end of delivering all the water to which the District is entitled under this contract and on such schedule of deliveries as shall be agreed to between the District's Board of Directors and the officer in charge of the Keyhole dam and reservoir, within the capacity limits of such works and having regard for other existing rights which must be supplied through these facilities. Deliveries of stored water shall be limited at any time to the amount which can be delivered through the outlet works of the dam taking into account the requirement of passing through the reservoir water belonging to prior or coordinate rights.

(f) The District, during the term of this contract and subject to the fulfillment of all its obligations hereunder, shall have a right to its share of Keyhole water, as provided in this Article 2, for beneficial use on District lands, and, upon completion of payment of the District's construction charge obligation under this contract, such right and the District's right hereunder to the use of 7.7 percent of the active capacity of Keyhole reservoir, shall become permanent, subject to the payment of the District's operation and maintenance obligations as determined at the time the construction obligation has been met.

Keyhole Construction Charge

3. Of the reimbursable cost of the Keyhole dam and reservoir, the District shall pay to the United States the sum of $60,000 as a Keyhole construction charge obligation. This $60,000 Keyhole construction charge obligation shall be additional to the District's construction charge obligation under the 1949 repayment contract and will be paid in forty successive

annual installments each of Fifteen Hundred ($1,500), and each of which shall be paid one-half on or before June 30 and one-half on or before December 31, of each year beginning with the year 1963.

Keyhole Operation and Maintenance Charges

4. The District will pay 7.7 percent of the portion of the annual cost of operating and maintaining the Keyhole Dam, Reservoir and appurtenant works allocated to irrigation. Such payments, in the amounts estimated annually by the Secretary and communicated in writing to the District, will be made on or before April 1 of each year this contract is in force. After the first year's notification of operation and maintenance costs, the notifications will contain a credit or surcharge equal to the overage or deficit, as the case may be, in the amount paid the prior year and the actual cost of operation and maintenance for that year. If the United States fails to notify the District of the estimated cost of operation and maintenance prior to April 1 of any year, the prior year's estimated cost will be paid.

Additional Keyhole Water

5. (a) During the term of this contract Keyhole water additional to that accruing to the District under Article 2(c) may be requested by the District upon a deposit of $1.25 for each acre-foot of additional water so requested. If the Secretary determines that such additional water is available when requested, he shall release the same under the conditions prescribed in Article 6.

(b) The District's annual obligation for the additional Keyhole water so released shall be computed either at the rate of $1.25 per acre-foot measured at Keyhole Dam, or $ 2.00 per acre-foot measured at the boundary line between Wyoming and South Dakota, depending upon which is the most economical to the District, as determined by the Secretary. Should the District's annual obligation be less than the amount deposited under Article 5(a), the

overpayment shall be applied to the District's next annual installment under Article 3.

(c) When releasing only Keyhole water from the reservoir, all water measured at the state line will be considered released water for determining cost of water at $2.00 per acre-foot.

(d) When releasing Keyhole water with Project water, all water measured at the state line be considered released water and the losses will be assigned in the same proportion as the amount of each kind of water released for purposes of determining the cost of additional Keyhole water.

Manner of Release

6. Any release of Keyhole water will be made in increments of 3,000 acre-feet or more, or will be made in conjunction with a release of project water in which the total release equals 3,000 acre-feet or more: Provided, That this requirement may be modified by agreement between the Secretary and the District's Board of Directors.

Agreed Charges a General Obligation of the District

7. The District as a whole is obligated to pay to the United States the charges becoming due as provided in this contract, notwithstanding the default in payment to the District by individual water users of assessments, tolls, or other charges levied by the District.

Levy of Assessments, Tolls, and Charges

8. (a) The District shall cause to be levied and collected all necessary assessments, tolls, and other charges, and will use all of the authority and resources of the District to meet the obligations of the District to make in full all payments to be made pursuant to this contract on or before the date such payments become due and to meet its other obligations under this contract.

(b) It is understood that the provisions of this contract will benefit lands of the District including

the lands within the so-called Johnson lateral and Inlet canal areas. The District agrees to levy charges against all lands in accordance with land classification. Assessments, tolls or other charges against all lands for the purpose of paying the District's obligations hereunder shall be fixed for the different classes of land at such ratios as may be determined by the District's Board of Directors: Provided, That all assessments shall be within the percentage ratios as follows, all ratios being based on a ratio of 100 for Class 1 land:

Class 1 - 100
Class 2 - 88-92
Class 3 - 60-65
Class 4 - 40-50

Application of 1949 Repayment Contract

9. (a) The 1949 repayment contract shall continue in full force and effect.

(b) The additional obligations assumed by the parties to this second amendatory contract shall be governed by the same provisions as are defaults (article 20); general obligation (Article 21); application of payment (Article 22); the keeping of records (Article 24); access to books and records (Article 25); excess lands (Article 27); computation of costs (Article 29); rules and regulations (Article 30); liability for drought (Article 32); assignments and successors (Article 34); and contingency on appropriations or allotments (Article 37). Such provisions and the articles containing them are incorporated in this second amendatory contract by reference and made a part hereof.

(c) The District's obligation to prepare and submit a District budget and to make assessments as provided in Article 10 of the 1949 repayment contract shall be extended to cover additionally the annual installments of the Keyhole construction charge obligation and the Keyhole operation and maintenance charges as above prescribed in Article 3 of the second amendatory contract.

Confirmation of Contract

10. The execution of this second amendatory contract shall be authorized by a vote of qualified electors of the District as provided by law. Thereafter, without delay, the District shall prosecute a proceeding in court for a judicial confirmation of (1) the regularity of the steps leading up to the making of this contract, and (2) the validity of the contract so far as the District and the District landowners are concerned. The District shall furnish the United States for its files, certified copies of all proceedings relating to the authorization of this contract.

Nondiscrimination

11. The following provisions governing performance of work under Government contracts, as set out in Section 301 of Executive Order 10925, dated March 6, 1961, shall be applicable to this contract, and shall be included in all contracts executed by the District for the performance of work contemplated by this contract, and for that purpose the term "contract" shall be deemed to refer to this instrument and to contracts awarded by the District and the term "contractor" shall be deemed to refer to the District and to contractors awarded contracts by the District:

In connection with the performance of work under this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by

the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment;

(4) The contractor will comply with all provisions of Executive Order No. 10925 of March 6, 1961, and of the rules, regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

(5) The contractor will furnish all information and reports required by Executive Order No. 10925 of March 6, 1961, and by the rules, regulations, and orders of the said Committee, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Committee for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's non-compliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled in whole or in part and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 10925 of March 6, 1961, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order or by rule, regulation, or order of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.

(7) The contractor will include the provisions of the foregoing paragraphs (1) through (6) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to Section 303 of Executive Order No 10925 of March 6, 1961, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for non-compliance: Provided, however, That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Term of Contract

12. The term of this contract is the 40-year period beginning January 1, 1963

Officials Not to Benefit

13. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

IN WITNESS WHEREOF, the parties hereto have signed their names the day and year first above written.

UNITED STATES OF AMERICA (Bruce Johnson)
By "s/ Bruce Johnson"
Regional Director, Region 6 - Bureau of Reclamation

BELLE FOURCHE IRRIGATION DISTRICT
By "s/ David Lundgren"
(SEAL) President, Board of Directors

ATTEST "s/ Florence Q Hedman"
Secretary, Board of Directors

RESOLUTION

WHEREAS, The Contract between the Belle Fourche Irrigation District and the United States of America is before the Board at this Special Meeting here assembled, and

WHEREAS, A Special Election was called for September 20, 1984, for the purpose of submitting to the legal voters of the Belle Fourche Irrigation District the proposition of approval or non-approval of the Repayment Contract between the United States of America and the Belle Fourche Irrigation District for rehabilitation of the Project, and

WHEREAS, Said election was conducted under the plan of voting by mail and in person as provided in the Irrigation District Laws of the State of South Dakota, and the By-Laws of the Belle Fourche Irrigation District; and

WHEREAS, The election returns from the Special Election of September 20, 1984, were before the Board on the 24th day of September, 1984, for the purpose of canvassing the votes cast at said election, and we

HERTOFORE CERTIFIED THE FOLLOWING RESULTS: For approval of Contract 325, against approval of contract, 41; and no spoiled ballots; making 366 the total number of votes cast at the election.

THEREFORE BE IT RESOLVED, That in view of the approval of the said Contract by Belle Fourche Project landowners, the President of the Board of Directors of the Belle Fourche Irrigation District, be authorized to sign the said Repayment Contract on behalf of the Belle Fourche Irrigation District, and that his signature be attested to by the Secretary of the Belle Fourche Irrigation District.

DATED, This 10th Day of October, 1984 at Newell, Butte County, South Dakota

EXHIBIT 7

Contract No. 5-07-60-WR170

Amendment No. 1

UNITED STATES

DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION

Pick-Sloan Missouri Basin Program

Belle Fourche Unit, South Dakota

AMENDATORY CONTRACT BETWEEN THE UNITED STATES OF AMERICA AND THE BELLE FOURCHE IRRIGATION DISTRICT, SOUTH DAKOTA

THIS AMENDATORY CONTRACT, made this 22nd day of April, 1996, pursuant to the Reclamation Act of 1902 (32 Stat. 388) acts amendatory thereof and supplementary thereto, particularly the Acts of November 17, 1983 (97 Stat. 989) and October 31, 1994 (P.L. 103-434), between the UNITED STATES OF AMERICA, hereinafter called the United States, represented by the office executing this contract and the BELLE FOURCHE IRRIGATION DISTRICT, with its principal place of business at Newell, South Dakota, hereinafter called District or Contractor.

W I T N E S S E T H:

Whereas, the following statements are made for the purpose of background information:

a. The Act of November 17, 1983 (Public Law 98-157), reauthorized the Belle Fourche Project as the Belle Fourche Unit of the Pick-Sloan Missouri Basin Program; provided the sum of $42 million (based on January 1981 prices) in construction appropriations for rehabilitation and betterment of the irrigation facilities and recreation and fish and wildlife measures to begin October 1, 1984; and authorized an amendatory contract (Contract No. 5-07-60-WR170) for the expenditure and repayment of those funds and the consolidation of the District's prior contracts (Contracts Ilr-1555 and 14-06-600-1949A). Contract No. 14-06-600-6979 covering water entitlements and payments for Keyhole Unit was also made a part of the contract.

b. The Act of October 31, 1994 (Public Law 103-434) , authorized an additional $10,500,0.00 in Federal funds and $4,000.000 in non-Federal cost share for the rehabilitation of water control structure, lining of additional canals, and rehabilitation of bridges and laterals. It also provided for the period of repayment of the irrigation costs by the District to be not more that 40 years from and including July 1, 1995.

NOW, THEREFORE, in consideration of the premises and mutual promises of the parties, it is agreed as follows:

1. Article 1. Of Contract No. 5-07-60-WR170 is hereby amended to read as follows:

TERM OF CONTRACT

1. This contract shall become effective upon execution and shall remain in force and effect for a period of 25 years; Provided, That upon expiration of the initial 25-year term of this contract, this contract shall be renegotiated for an additional 15-year term to ensure repayment of the District's remaining loan obligation as provided in Article 4 herein; Provided, further, That all terms and conditions contained herein, except the District's remaining loan obligation as set forth in Article4, shall be renegotiable based on applicable Federal and State laws and policies in effect at the time. Upon expiration of the second concurrent term of this contract, the parties hereto shall enter into appropriate agreements to provide for the continued operation and maintenance of the Belle Fourche Unit project facilities by the District.

2. Articles 2.d and 2.e are hereby added to the contract and shall read as follows:

DESCRIPTION OF WORK PROGRAM

2.d. The United States proposes to expend for the rehabilitation and betterment of project works as authorized by Public Law 98-157 an additional sum as amended by Public Law 103-434, said sum not to exceed $10.5 million (based on October 1994 prices),

plus or minus such amounts (if any) as may be justified by reason of ordinary fluctuations in construction costs indexes applicable to the types of construction involved. The United States and the District may agree and arrange for the District's performance of any of the work contemplated by entering into appropriate work performance agreements pursuant to the Drainage and Minor Construction Act of June 13, 1956 (70 Stat. 274).

2.e. The United States in cooperation with the District shall conduct a detailed study of project-wide water use management and shall propose the implementation of improved management practices based on the results of this study for the purpose of achieving optimal conversation of project water supplies. The District hereby agrees to implement said improved management practices which will include the measurement of all water deliveries to project lands and the establishment of water conservation policies.

3. Articles 4.a and 4.b are hereby amended to read as follows:

ANNUAL CONSTRUCTION CHARGES

4.a. Annual construction charges (payments) shall be paid by the District, to the United States beginning in the year this contract is executed and continue throughout the contract term. This repayment obligation shall be discharged under the initial 25-year contract term and a subsequent 15-year term. The first annual payment shall be due June 30, 1996. Subsequent payments shall continue annually until 25 payments have occurred leaving a remaining repayment obligation. The remaining repayment obligation shall be repaid under the provisions of a 15-year renegotiated contract. Negotiations on the terms of the renegotiated contract shall begin no later than 2 years prior to the expiration date of the initial 25 year term. Therefore, beginning July 1, 1995, the annual payments shall increase to the greater of $277,700 or the amortization capacity and classification of the District's lands as then determined by the Secretary. At 5-year intervals beginning in the year 2003, the

annual payments shall be subject to review and adjustment by the Contracting Officer based on the District's payment capacity as determined at the time of review.

4.b. Annual payments shall be due and payable on each June 30 during the contract term.

4. Article 7.h is hereby amended and shall read as follows:

OPERATION AND MAINTENANCE OF TRANSFERRED WORKS - PAYMENT OF MISCELLANEOUS COSTS

7.h. In addition to all other payments to be made by the District under this contract, the District shall, during the period of time any portion or all of the project works are being operated, pay to the United States in advance by April 1 of each year, following the receipt of a detailed statement, miscellaneous costs incurred by the United States for any work requested or caused by the District involving the administration and supervision of this contract. These miscellaneous cost would include, but are not limited to, the costs associated with NEPA compliance, Hydromet, stream gauging and record keeping, review of operation and maintenance examinations, performance monitoring of the Belle Fourche Dam, and technical assistance for the distribution system.

5. Article 8.d is hereby added to the contract and shall read as follows:

REVIEWS AND INSPECTIONS

8.d. Following construction, the District shall periodically evaluate and revise the water management and conservation policies provided for in Article 2.e. as determined by the United States. Revision by the District shall be made in cooperation with the United States. In the event the District fails to implement or maintain the water management and conservation policies to the satisfaction of the United States, the United States may issue to the District a special written notice detailing such failure(s). Within 60 days

of receipt of such notice, or as the United States may otherwise specify in said written notice. The District shall submit a plan outlining the steps that will be taken to bring its operations into compliance. If the District fails to submit or implement a plan of compliance within the specified time, the United States may develop and implement such plan, and the costs thereof shall be paid by the District as directed by the United States.

6. Article 11, is hereby amended to read as follows:

TITLE TO PROJECT FACILITIES

11.a. Title to project facilities of the Belle Fourche Unit, except as hereinafter provided, shall be and remain in the name of the United States until the construction charge obligation of the District as prescribed in this contract has been fully discharged and until otherwise approved by the Congress, notwithstanding that such facilities are transferred to the District for care, operation, and maintenance.

b. It is the desire of the United States to negotiate title transfer of Water measurement and conveyance facilities, and Federal lands associated with these facilities currently held in title by the United States on the Belle Fourche Unit. The United States further desires to seek specific legislation authorizing the negotiated terms of the transfer to such facilities prior to final project repayment by the District. The District agrees to enter into negotiations in good faith with the United States concerning the transfer of title to such facilities.

7. Except as amended herein, Contract No. 5-07-60-WR170 shall remain in full force and effect.

IN WITNESSETH WHEREOF, the parties hereto have signed their names the day and year first above written.

(Seal)

UNITED STATES OF AMERICA
By /s/ Neil Stevens,
Regional Director

Great Plains Region
Bureau of Reclamation

ATTEST:

Belle Fourche Irrigation District

By /s/ Darrell Cox
President, Board of Directors

By /s/Lynnette L. Culver
Secretary-Treasurer

EXHIBIT 8

RECORD OF ASSESSMENT IN THE BELLE FOURCHE IRRIGATION DISTRICT

The District Board did not follow the ratios of the 1971 contract amendment since 1971. Proof: Assessment due January 1, 1995 and Assessment due January 1, 1996

All information here discussed and presented is taken from the depositions and exhibits of this case. No new evidence has been brought into the following discussion.

However, this discussion is necessary because it reveals the actual history of assessments in the District, which has been misinterpreted by the Court.

According to the 1971 contract, Class 4 lands had to be assessed at a ratio of from 1 to 10% compared to 100% for Class 1 lands for construction obligations.

Operating and maintenance costs were to be assessed equal-per-acre regardless of land class. (See Exhibit No. 5, page 2 of the Oliver Deposition).

In 1995, the assessment against a Class Four acre was $17.20 as cited in the chart in Barnaud Exhibit B, page 3. The Assessment against a Class One acre was $19.20, as also cited in the chart in Barnaud Exhibit B, page 3.

The 1984 Contract, Exhibit #1 of the Oliver Deposition, reveals that the annual construction obligation in 1995 was $277,700

and $1500 for the 1963 Keyhole Contract. The makeup of District acres is revealed in Barnaud Exhibit B, page #1. The District consists of :

Class One:	6,361 acres
Class Two	12, 681 acres
Class Three	17,658 acres
Class Four	20,368 acres

A mathematical calculation of federal debt obligation by land Class computed at the maximum rates established by the 1971 contract is easily obtained. One levy would bring in the following amount:

6,361 acres @ $1.00	(or 100%)	= $ 6,361.00
12,681 acres @ $ .80	(or 80%)	= $10,144.80
17,658 acres @ $ .25	(or 25%)	= $ 4,414.50
20,368 acres @ $ .10	(or 10%)	= $ 2,036.80
	Total:	$22,957.10

To raise the $279,200 ($277,700 District 1984 contract plus the $1500 Keyhole, 1963 contract), required for the construction debt obligation, the District would have to have assessed Class One at a rate of a little more than $12.065 per acre; Class Two at 80% or $9.652 per acre; Class Three at 25% or $3.016 per acre; and Class Four at 10% or $1.207 per acre.

6,361 Class One acres @ $12.162	= 77,362.48
12,681 Class Two acres @ $9.730	= 123,386.13
17,658 Class Three acres @ $3.041	= 53,697.98
20,368 Class Four acres @ $1.216	= 24,767.49
Total:	$279,214.08

If we subtract the Class One construction obligation of $12.16 per acre from the 1995 and 1996 assessment of $19.20, we get $7.04 left over. Since the total assessment covers two

items, as stated by the District manager, construction and operation/maintenance obligations, we see that in 1995 and 1996, the District, was actually assessing the Class One acre $7.04 per acre for operation and maintenance.

If we subtract the Class Four construction obligation of $1.22 per acre from the 1995 and 1996 assessment of $17.20, we get $15.98 left over. Thus, the District was actually assessing the Class Four acre $15.98 per acre for operation and maintenance.

If the District was in compliance with the federal ratios for construction obligation when levying the January 1, 1995 and January 1, 1996 assessments, **then every Class Four acre was assessed $15.98 per acre when Class One was assessed $7.04 per acre for operation and maintenance. The 1971 contract provision said every acre would be assessed equal-per-acre for operation and maintenance.**

EXHIBIT 9

ACTUAL IRRIGATION ASSESSMENT FROM 1960 TO 1998